

Supreme Court No. 201,639-1

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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IN RE DISCIPLINARY PROCEEDING AGAINST

CARLENE M. PLACIDE,

Lawyer (Bar No. 28824).

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**ANSWERING BRIEF OF THE  
OFFICE OF DISCIPLINARY COUNSEL  
OF THE WASHINGTON STATE BAR ASSOCIATION**

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## **I. COUNTERSTATEMENT OF THE ISSUES**

1. Respondent misappropriated legal fees that belonged to her law firm, and then lied about it to her partners. After she was caught and expelled from the firm, she went to a different firm and did the same thing again. Does the Court have jurisdiction over Respondent's misconduct?

2. Under APR 19(e)(5), which is presumed constitutional, information relating to a confidential ethics inquiry is not admissible in a disciplinary proceeding because, among other things, it is hearsay with no particular indicia of reliability. Has Respondent proved that the rule is unconstitutional beyond a reasonable doubt?

3. Under well-settled case law, the prosecution is required to prove only the elements of an offense even if it has included an additional element in the charging document. Unlawfulness is not an element of RPC 8.4(c). The formal complaint alleged that Respondent's conduct was both unlawful and a violation of RPC 8.4(c). Was the Office of Disciplinary Counsel (ODC) required to prove only the elements of RPC 8.4(c) to establish a violation of that rule?

4. State of mind is a factual finding given great deference. Should the Court affirm the hearing officer's findings that Respondent knew of her firms' policies regarding off-the-books clients, where there was documentary and testimonial evidence that Respondent expressly

agreed to comply with those policies and expressly admitted that she knew it was wrong to represent off-the-books clients?

5. The hearing officer concluded that Respondent violated RPC 8.4(c) by “repeatedly and insistentl y lying” to her law partners about her off-the-books practice. For the first time on appeal, Respondent asserts that her false statements were mere “mistakes.” Are the hearing officer’s findings supported by substantial evidence notwithstanding Respondent’s alternative explanation of the facts?

6. Respondent wrongfully exerted unauthorized control over legal fees that belonged to her law firm, in violation of RCW 9A.56.020(1) (theft) and RPC 8.4(b) (criminal act). After she was caught, the firm agreed to release her from liability upon the performance of certain conditions that Respondent has never performed. Does the release shield Respondent from discipline for violations of the RPC?

7. After Respondent failed to perform legal services for which she had been paid, her former law firm completed the work without being paid. Respondent retained the fee, even though she knew she had not earned it. Was the fee that Respondent retained for services she never performed an unreasonable fee under RPC 1.5(a)?

8. Under RCW 9A.56.010(23)(b) and 9A.56.010(23)(c), theft may be committed by appropriating another’s property where that

property has never been delivered to the party entitled to receive it. The hearing officer incorrectly concluded Respondent did not commit theft as charged in Counts 1 and 6 because the phrase “property of another” in RCW 9A.56.020(1) does not cover property not yet delivered to the party entitled to receive it. Should the Court affirm the Disciplinary Board’s unanimous decision on the additional ground that Respondent did commit theft as charged in Counts 1 and 6?

9. Respondent committed multiple ethical violations for which the presumptive sanction is disbarment. There are multiple aggravating factors, and no compelling mitigating factors. Should this Court affirm the Disciplinary Board’s unanimous recommendation of disbarment?

## **II. COUNTERSTATEMENT OF THE CASE**

### **A. SUBSTANTIVE FACTS**

#### **1. Respondent’s Misconduct at Dorsey & Whitney LLP**

Respondent was admitted to the practice of law in 1999. Hearing Officer’s Amended Findings of Fact, Conclusions of Law, and Recommendation<sup>1</sup> (AFFCLR) ¶ I.2. Until 2006, she practiced with the law firm of Foster Pepper PLLC. AFFCLR ¶ I.3. In November 2006, she

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<sup>1</sup> The Hearing Officer’s Amended Findings of Fact, Conclusions of Law, and Recommendation are at Bar File (BF) 105 and attached as Appendix A.

joined the law firm of Dorsey & Whitney LLP (Dorsey) as a “non-equity” partner with base compensation of \$225,000 per year and other benefits. AFFCLR ¶¶ I.4-5; EX 111.

Dorsey’s policies required that all compensation received by any Dorsey partner, associate, or other attorney for professional services was the property of Dorsey. AFFCLR ¶ I.6; EX A-109 at 20; A-110. Dorsey’s policies further required that all checks for legal services should be made payable to Dorsey, that any check for services made payable to an individual should be immediately endorsed and delivered to Dorsey, and that any cash representing compensation should be immediately delivered to Dorsey. AFFCLR ¶ I.7; EX A-109 at 20. Respondent knew of these policies and agreed to comply with them. AFFCLR ¶ I.8; EX 111 ¶ 6. She knew that any fees she received for providing legal services were the property of, and should be turned over to, Dorsey. AFFCLR ¶ I.8.

In spite of that, Respondent surreptitiously represented what were referred to at the disciplinary hearing as “outside” or “off-the-books” clients. AFFCLR ¶¶ I.9-10. She received compensation for professional services from those off-the-books clients, both by check and in cash. AFFCLR ¶ I.20. And although she knew those funds were the property of Dorsey, AFFCLR ¶ I.8, Respondent concealed and retained Dorsey’s funds instead of turning them over to Dorsey. AFFCLR ¶ I.24.

Respondent represented her off-the-books clients on a flat fee basis, with fees and expenses paid in advance. AFFCLR ¶ I.20. Not only did Respondent fail to turn over those funds to Dorsey, AFFCLR ¶ I.24; she failed to deposit them in a trust account as required by RPC 1.5(f) and RPC 1.15A(c)(2). AFFCLR ¶¶ I.22-23, 46. Instead, Respondent deposited the funds she received from her off-the-books clients into her own personal bank account. AFFCLR ¶¶ 23, 46. In at least one instance, Respondent was unable to return unearned fees to a client who needed them because she had failed to deposit and hold those funds in a trust account. AFFCLR ¶¶ I.47-48; TR 910-12; EX A-130 at 297-98.

Although Dorsey derived no benefit from the fees Respondent received from her off-the-books clients, Respondent freely used Dorsey's resources to generate those fees. AFFCLR ¶¶ I.17-19. Respondent used, among other things, Dorsey's office space, Dorsey's office equipment, the time and labor of other Dorsey employees, Dorsey's email account, and Dorsey's letterhead to generate fees from off-the-books clients that she concealed and retained instead of turning over to Dorsey. AFFCLR ¶¶ I.17-19; TR 64-65, 86, 379.

At the same time, Respondent took extraordinary measures to conceal her off-the-books clients from Dorsey. AFFCLR ¶¶ I.34-35; TR 86, 176, 224-25, 228, 238-40, 437, 440, 442, 515, 520. Among other

things, Respondent directed her secretary not to open her mail, insisted on having a printer in her own office instead of using a shared printer in a common area, and went “racing down the hall” to prevent a secretary from organizing papers in her office. TR 86, 176, 224-25, 228, 238-40, 437, 440, 442, 515, 520.

In November 2011, Respondent’s partners learned of her surreptitious off-the-books practice through one of the off-the-books clients who had paid Respondent in cash. AFFCLR ¶ I.25; TR 63-64, 72. The ensuing investigation revealed that Respondent had received substantially more than \$56,700 in fees from off-the-books clients. AFFCLR ¶¶ I.33, 37-40; TR 64-66, 70-75; EX A-129 at 291, 308-09.<sup>2</sup> That figure represented only the fees that could be specifically identified through a review of Respondent’s Dorsey email account. AFFCLR ¶ I.38; TR 90, 94. Because Dorsey could only review email from the preceding 90 days, the full extent of Respondent’s off-the-books practice, and the total amount of fees that she failed to turn over to Dorsey, could not be determined. AFFCLR ¶¶ I.38-40; TR 74, 94.

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<sup>2</sup> EX A-129 is the Separation Agreement and General Release discussed infra. The pages Bates numbered 308-09 are Exhibit A to the Separation Agreement. Unfortunately, these pages became separated from the rest of the Separation Agreement when the exhibits were filed.

Ken Jorgensen, Dorsey's Ethics Partner, and Kelli Kohout, Dorsey's Regional Director, met with Respondent on November 8, 2011 to discuss the firm's investigation. AFFCLR ¶ I.26; TR 75-85, 446-53; EX A-108. At that meeting, Respondent repeatedly lied about her off-the-books practice. AFFCLR ¶¶ I.27-35. Initially, Respondent falsely denied having any off-the-books clients at all. AFFCLR ¶¶ I.27-28. When she was shown documentary evidence that she had in fact represented a particular off-the-books client, Respondent made up an excuse for having "forgotten" to mention it and denied having represented other off-the-books clients. AFFCLR ¶ I.28. Likewise, Respondent falsely denied having received any payments from off-the-books clients. AFFCLR ¶ I.29. When she was shown documentary evidence that she had in fact received such payments, Respondent made up another excuse for not having disclosed them. AFFCLR ¶ I.30. Respondent repeated this process again and again each time she was confronted with the documentary evidence, continuing to lie about and misrepresent the extent of her off-the-books practice. AFFCLR ¶¶ I.27-30, 32-33, 35; TR 75-85, 446-53; EX A-108.

Shortly thereafter, Dorsey decided to terminate Respondent's employment. AFFCLR ¶ I.36; TR 84-85. Mr. Jorgenson explained that this decision was based as much on Respondent's deceit and dishonesty in

lying about her off-the-books practice as on her off-the-books practice itself. TR 84-85. On December 9, 2011, Respondent and Dorsey executed a Separation Agreement and General Release. AFFCLR ¶ I.37; TR 89-94, EX A-129. In it, Respondent represented that, from the time she joined Dorsey, she had received a total of \$56,700 from her off-the-books clients. EX A-129 at 291, 308-309. By that representation, Respondent intentionally misled Dorsey yet again about the extent of her off-the-books practice. AFFCLR ¶ I.41. In fact, Respondent had received substantially more than \$56,700 in fees from her off-the-books clients while at Dorsey. AFFCLR ¶¶ I.38-39.

In the Separation Agreement, Respondent agreed to repay Dorsey \$50,923<sup>3</sup> by December 30, 2012. AFFCLR ¶ I.42; EX A-129 at 291-92. Dorsey agreed to release Respondent from liability effective upon payment of the sum specified in the agreement. EX A-129 at 288-89. In November 2012, Mr. Jorgensen, on behalf of Dorsey, filed a grievance against Respondent. AFFCLR ¶ I.43; EX A-101. So far, Respondent has paid Dorsey nothing, and Dorsey has not “pressed her” to pay. AFFCLR ¶¶ I.44-45; TR 94-95, 185.

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<sup>3</sup> That figure represented the \$56,700, plus some other funds Respondent owed to Dorsey, minus Respondent’s November 2011 partnership income. AFFCLR ¶ 42; EX A-129 at 292.

Dorsey lawyers and nonlawyers spent many hours containing the potential damage to the firm and its clients caused by Respondent's off-the-books practice. AFFCLR ¶ III.7; TR 95-96, 206-07, 276-290, 419-20. Dorsey had obligations to Respondent's off-the-books clients because, as clients of a firm partner, they were clients of the firm. AFFCLR ¶ III.7; TR 280-81, 288. But the identities of many of those clients were unknown to Dorsey since Respondent had concealed them from the firm. AFFCLR ¶¶ I.34-35; TR 278-79. Dorsey had to determine, among other things, who those clients were, whether the firm needed to complete the work that Respondent had promised to perform, and how much Respondent had already been paid for that work. AFFCLR ¶ III.7; TR 279-81, 417-18. In addition to a very substantial loss of revenue, Dorsey was exposed to potential unknown liabilities, as well. AFFCLR ¶ III.7; TR 288-89, 417-20. In particular, Respondent's failure to use the firm's system for screening potential conflicts of interest (which would have required her to disclose her off-the-books clients to the firm) resulted in at least one instance of an actual conflict of interest between one of Dorsey's known clients and one of Respondent's off-the-books clients. AFFCLR ¶ I.16; TR 288-89, 395-96, 420-21.

Client P.S.<sup>4</sup> was one of Respondent's off-the-books clients whom Dorsey discovered during its investigation of Respondent's off-the-books practice. AFFCLR ¶¶ I.39, 49-55; TR 65; EX A-102-04, 114-119A. In October 2011, Respondent agreed to represent P.S. in an immigration matter for a \$2,500 flat fee. AFFCLR ¶ I.49; TR 721; EX A-102. P.S. paid Respondent \$450 by one check and another \$2,050 by a second check shortly before Dorsey terminated Respondent's employment. AFFCLR ¶ I.49; EX A-103-04; TR 201-02, 721-23. Respondent never completed the work for which P.S. paid her. AFFCLR ¶ I.50; TR 723-24. Dorsey, however, honored the contract that P.S. had entered into with Respondent and completed the work without receiving any compensation. AFFCLR ¶ I.51; EX A-119A; TR 728. In June 2012, P.S. told Respondent that Dorsey had completed the work for him and that she should contact Dorsey about returning the unearned fees he had paid her. AFFCLR ¶ I.51; EX A-119A; TR 729-30. Respondent has never returned the unearned fees to Dorsey or to P.S. AFFCLR ¶ I.52; TR 730, 909.

In her Separation Agreement, Respondent falsely represented that she had received only \$450 from P.S., instead of the \$2,500 that she

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<sup>4</sup> Client P.S. testified at the disciplinary hearing and is referred to by name in the transcript and the First Amended Formal Complaint. He is referred to as "Client P.S." in the AFFCLR, except in footnotes 4 and 5, which quote the First Amended Formal Complaint. He will be referred to herein by his initials.

actually received. AFFCLR ¶ I.54; EX A-129 at 291, 309. At the disciplinary hearing, Respondent testified that she had not returned the unearned fees to Dorsey because “[t]hose fees were included as part of the settlement agreement.” AFFCLR ¶ I.53; TR 909. The hearing officer found Respondent’s excuse unreasonable and her testimony not credible, since Respondent had never disclosed the \$2,050 payment from P.S. and had affirmatively misrepresented the amount of money she received from P.S. AFFCLR ¶¶ I.54-55.

**2. Respondent’s Misconduct at Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

Sometime before Dorsey terminated her employment, Respondent began talks with the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (Ogletree) about joining that firm. AFFCLR ¶ I.56. After Dorsey terminated her employment, Respondent told Ogletree lawyers she had been terminated because Dorsey had learned of her talks with Ogletree. AFFCLR ¶ I.59. That was a lie: Dorsey had no knowledge of Respondent’s talks with Ogletree, and Respondent was terminated for her dishonesty and her off-the-books practice. AFFCLR ¶¶ I.57-59; TR 84-85. In December 2011, Respondent was brought into Ogletree as a “non-equity” shareholder with base compensation of \$300,000 per year and

other benefits. AFFCLR ¶¶ I.60-61; TR 540-41; EX A-210. She was hired to staff the new Seattle office that Ogletree was opening. TR 656.

Ogletree expected that Respondent, as an Ogletree shareholder, would perform legal services exclusively for Ogletree clients, and that she would turn over all the fees she generated to Ogletree. AFFCLR ¶ I.63. Respondent knew this. AFFCLR ¶¶ I.64-65. In fact, as described below, Respondent openly admitted that she knew it. AFFCLR ¶¶ I.78, 88; TR 546-47, 552.

In spite of that, Respondent surreptitiously represented off-the-books clients at Ogletree, just as she had done at Dorsey. AFFCLR ¶¶ I.66-67. While she was at Ogletree, Respondent received thousands of dollars in legal fees that she retained personally instead of turning over to Ogletree. AFFCLR ¶ I.67; TR 794. And just as she had done at Dorsey, respondent failed to deposit those funds in a trust account as required by RPC 1.5(f) and RPC 1.15A(c)(2) \c 8. AFFCLR ¶¶ I.75-77. Respondent did not maintain a trust account for her off-the-books clients, so she deposited the funds she received from them into her own personal bank account. AFFCLR ¶¶ I.76-77.

Just as she had done at Dorsey, Respondent freely used Ogletree's resources to generate the fees that she concealed and retained for herself instead of turning over to Ogletree. AFFCLR ¶¶ I.69, 71. Respondent

used, among other things, Ogletree's office space, Ogletree's office equipment, Ogletree's email account, and Ogletree's Federal Express account to generate fees from off-the-books clients that she concealed and retained for herself. AFFCLR ¶ I.71; TR 544, 549-50, 553, 793-94. While Ogletree received none of the benefits from Respondent's off-the-books practice, it unwittingly afforded Respondent the means to carry on that practice. AFFCLR ¶¶ I.66-67, 71.

In November 2012, Ogletree lawyers learned of the grievance that Ken Jorgensen had filed against Respondent on behalf of Dorsey. AFFCLR ¶ I.79; TR 782. A few days later, Christopher Mixon, Ogletree's General Counsel, spoke with Respondent by telephone about the grievance. AFFCLR ¶ I.80; TR 782-85. During that conversation, Respondent lied repeatedly. AFFCLR ¶¶ I.81-82. She told Mr. Mixon that Dorsey had approved of her representation of off-the-books clients, that she had been terminated because Dorsey had learned of her talks with Ogletree, and that Dorsey had filed the grievance to better position itself to compete with her for business. AFFCLR ¶¶ I.81-82; TR 783-85. None of those assertions was true, and Respondent knew it. AFFCLR ¶¶ I.81-82.

Mr. Mixon obtained a copy of the Respondent's Separation Agreement with Dorsey, which contained a list of some of Respondent's off-the-books clients and some of the payments she had received from

them while at Dorsey. AFFCLR ¶ I.83; TR 785-86; EX A-129 at 291, 308-09. This caused Mr. Mixon to wonder whether Respondent might be engaging in the same misconduct at Ogletree. TR 786. Through a lengthy process of reviewing and cross-checking information in Respondent's Ogletree email account and other internal sources, Mr. Mixon was able to determine that in the year she worked at Ogletree, Respondent had received at least \$25,000 in payments from off-the-books clients that she never disclosed to Ogletree. AFFCLR ¶ I.84; TR 786-94.

Mr. Mixon and Charles Baldwin, a member of Ogletree's Board of Directors, met with Respondent on January 9, 2013 to discuss the firm's investigation. AFFCLR ¶¶ I.85-91; TR 544-55, 795-803; EX A-213. That meeting mirrored Respondent's November 8, 2011 meeting with Ken Jorgensen and Kelli Kohout of Dorsey. At the beginning of the meeting, Respondent admitted openly and unequivocally that she knew she was prohibited from representing off-the-books clients while at Ogletree. AFFCLR ¶ I.88; TR 546-47, 826. Then she proceeded to lie repeatedly about her off-the-books practice at Ogletree, just as she had lied about her off-the-books practice at Dorsey. AFFCLR ¶¶ I.27-35, 86-87, 89-91. Respondent claimed, falsely, that Dorsey had authorized her to represent off-the-books clients, but that she had "never" done so at Ogletree because she knew it was wrong. AFFCLR ¶ 89; TR 546-47, 797-98. Then, when

shown documentary evidence that she had in fact represented a particular off-the-books client, Respondent made up an excuse for having “forgotten,” and denied having represented other off-the-books clients. AFFCLR ¶ I.91; TR 547-50, 798-99. Respondent repeated this process again and again, continuing to lie about and misrepresent the extent of her off-the-books practice, just as she had done at Dorsey. AFFCLR ¶ I.91; TR 547-50, 798-99.

After the meeting, Ogletree decided to terminate Respondent’s employment. AFFCLR ¶ I.92; TR 810-11. Mr. Mixon testified that the decision was based as much on Respondent’s lying about her off-the-books practice as on her off-the-books practice itself. TR 810-11. Respondent and Ogletree executed a Settlement Agreement and General Release. AFFCLR ¶ I.92; EX A-208; TR 555-61, 802-05. Respondent agreed that her employment would be terminated immediately upon her expulsion from the firm by a vote of its shareholders. EX A-208 at 324. She agreed to repay Ogletree the larger of (a) the total amount she received from off-the-books clients while at Ogletree, or (b) \$15,000. AFFCLR ¶ I.93; EX A-208 at 328; TR 557-59, 804. Based on its internal review, \$75,000 was Ogletree’s “best estimate” of the amount of fees Respondent had diverted from the firm. TR 558-59. Respondent also agreed to provide Ogletree with all documents relating to and a full

accounting of her representation of off-the-books clients. EX A-208 at 324. So far, Respondent has never produced any records, never provided an accounting, and never paid Ogletree anything. AFFCLR ¶ 1.94; TR 560-61, 813-14.

Ogletree, like Dorsey before it, had to spend additional time and money containing the potential damage to the firm and its clients caused by Respondent's off-the-books practice. TR 559-61, 818-820. Just as she had done at Dorsey, Respondent failed to use Ogletree's system for screening potential conflicts of interest, which would have required her to disclose her off-the-books clients to the firm. TR 550-51, 604, 787, 793, 845. And in at least one case, Ogletree was obliged to refund fees paid to Respondent by one of her off-the-books clients for services that Respondent failed to perform. TR 559, 561.

### **3. Respondent's Defense**

During ODC's case, Respondent tried repeatedly to introduce alleged facts into the record without any testimony or other evidence, in effect testifying while not under oath. AFFCLR ¶ 1.97. Then Respondent refused to testify when called, based on "attorney-client privilege, considering I'm the attorney and the client." TR 888-89. Respondent did eventually testify, and the hearing officer found she was "not a credible witness." AFFCLR ¶ 1.96. She claimed that Dorsey had behaved like a

“jilted lover” because their lawyers were “upset” that she was leaving the firm. AFFCLR ¶ I.98; TR 929-31. She claimed that Ogletree terminated her employment because it was an “old all white boy sort of a firm” with an “ulterior racist” motive. AFFCLR ¶ I.99; TR 913-14. She refused to acknowledge that she had done anything wrong, and she had no remorse. AAFFCLR ¶¶ I.98-100; TR 927, 939.

## **B. PROCEDURAL FACTS**

The First Amended Formal Complaint, BF 18, charged Respondent with eight counts of misconduct.<sup>5</sup> The disciplinary hearing took place October 26-29, 2015. BF 91. On March 28, 2016, Hearing Officer Carl J. Carlson entered his Findings of Fact, Conclusions of Law, and Hearing Officer’s Recommendation, which he amended on May 5, 2016. BF 94, 103-05.

As for Counts 1 and 6, the hearing officer concluded that Respondent violated RPC 8.4(c) but, with one exception, did not commit theft and did not violate RPC 8.4(b). AFFCLR ¶¶ II.1-23. The one exception, according to the hearing officer, was the \$2,050 that client P.S. paid for services provided by Dorsey, which Respondent misappropriated. AFFCLR ¶¶ II.18-20. As for Counts 2 and 7, the hearing officer

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<sup>5</sup> The First Amended Formal Complaint, BF 18, is attached to the Hearing Officer’s Amended Findings of Fact, Conclusions of Law, and Recommendation (Appendix A).

concluded that Respondent violated RPC 8.4(c) by “repeatedly and insistently lying,” both to Dorsey and to Ogletree, about her off-the-books clients. AFFCLR ¶¶ II.24-27.

As for Counts 3 and 8, the hearing officer concluded that Respondent violated RPC 1.15A(c)(2) by failing to deposit unearned fees in a trust account. AFFCLR ¶¶ II.28-29. As for Counts 4 and 5, the hearing officer concluded that Respondent violated RPC 1.15A(f) and RPC 1.5(a) by collecting and retaining funds from client P.S. for work she never performed, and by failing to deliver those funds to Dorsey, the party entitled to receive them. AFFCLR ¶¶ II.30-32.

As for Counts 1, 2, 6, and 7, the hearing officer determined that the presumptive sanction was disbarment under standard 5.11(b) of the American Bar Association’s Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) (ABA Standards). AFFCLR ¶¶ III.1-12. As for Counts 3 and 8, the hearing officer determined that the presumptive sanction was reprimand under ABA Standards std. 4.13. AFFCLR ¶¶ III.13-17. And as for Counts 4 and 5, the hearing officer determined that the presumptive sanction was suspension under ABA Standards stds. 4.12 and 7.2. AFFCLR ¶¶ III.18-27.

The hearing officer found six aggravating factors: a pattern of misconduct, multiple offenses, false statements or other deceptive

practices during the disciplinary process, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and indifference to making restitution. AFFCLR ¶ IV.1. The hearing officer found only one mitigating factor: absence of a disciplinary record. AFFCLR ¶ IV.2. The hearing officer noted that Respondent had “offered” to return to P.S. the fee that he paid her for work she never performed, but found that she “undermined any credit this might warrant” by failing to turn over the fee to Dorsey. Id.

Based on the presumptive sanctions and the aggravating and mitigating factors, the hearing officer recommended disbarment. AFFCLR ¶ V. In making that recommendation, the hearing officer noted that Respondent’s “willingness to repeatedly and consistently lie” about “important matters” demonstrated “a lack of the degree of honesty and integrity necessary” to be a lawyer. AFFCLR ¶ V.

Respondent appealed from the hearing officer’s decision under ELC 11.2(b). BF 108. On March 10, 2017, after briefing and oral argument, the Disciplinary Board issued an order adopting the hearing officer’s decision and recommendation. BF 114, 118, 121, 125. The Board added, however, that “the existence of a contractual or fiduciary duty between Placide and the partners at Dorsey and/or Ogletree is not

necessary to establish the violations and to the Board's decision." BF 121.

The Board's decision was unanimous. Id.

### **III. ARGUMENT**

#### **A. STANDARD OF REVIEW**

Unchallenged findings of fact are verities on appeal. In re Marshall (Marshall I), 160 Wn.2d 317, 330, 157 P.3d 859 (2007). Where challenged, the hearing officer's findings of fact will be upheld if they are supported by substantial evidence. Marshall I, 160 Wn.2d at 330. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of a declared premise. Marshall I, 160 Wn.2d at 330. Even if there are several reasonable interpretations of the evidence, it is substantial if it reasonably supports the finding. In re McGrath, 174 Wn.2d 813, 818, 280 P.3d 1091 (2012). Circumstantial evidence is as good as direct evidence. Id.

Credibility determinations are for the hearing officer, who had direct contact with the witnesses and is best able to make such judgments. Marshall I, 160 Wn.2d at 330; In re Rodriguez, 177 Wn.2d 872, 885, 306 P.3d 893 (2013). The hearing officer is entitled to draw reasonable inferences from the evidence, and the reviewing court must view the evidence and the inferences therefrom in the light most favorable to the prevailing party. Sunderland Family Treatment Services v. City of Pasco,

127 Wn.2d 782, 788, 903 P.2d 986 (1995); see also In re Cohen (Cohen I), 149 Wn.2d 323, 332-33, 67 P.3d 1086 (2003). As fact finder, the hearing officer is “the sole and exclusive judge of the evidence, the weight to be given thereto, and the credibility of witnesses.” State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999).

A lawyer who challenges findings of fact must do more than argue her version of the facts while ignoring adverse evidence. In re Marshall (Marshall II), 167 Wn.2d 51, 67, 217 P.3d 291 (2009). She must present argument as to why specific findings are unsupported, and she must cite to the record to support her argument. Id.; RAP 10.3(a)(6). Findings of fact will not be overturned based simply on an alternative explanation of the facts or on a version of the facts previously rejected by the hearing officer. Marshall II, 167 Wn.2d at 67.

Conclusions of law are reviewed de novo and will be upheld if they are supported by the findings of fact. Id. The hearing officer’s sanction recommendation is also reviewed de novo. In re Conteh, 187 Wn.2d 793, 800, 389 P.3d 591 (2017).

**B. IN RE RICE DOES NOT PROVIDE A SAFE HARBOR FOR LAWYERS WHO LIE TO AND STEAL FROM THEIR PARTNERS**

Based on a creative misinterpretation of In re Rice, 99 Wn.2d 275, 661 P.2d 591 (1983), Respondent argues that her misconduct is “not

within the purview” of this Court’s disciplinary authority because it relates to an “intrapartnership accounting dispute.” OB at 12. But nothing in Rice exempts a lawyer from this Court’s disciplinary authority where the facts establish a violation of the RPC.

This Court’s disciplinary authority, and the authority of those who act under it, is set forth in the ELC. See ELC 1.2, 2.1, 2.3, 2.5, 2.8. Under ELC 1.2, “any lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction” and the ELC. The only exception is for judges as set forth in RPC 8.5(c), which is not applicable. There is no exception for conduct that can be characterized (or mischaracterized) as being somehow related to an “intrapartnership accounting dispute.” Because Respondent is “admitted to practice in this jurisdiction,” she is “subject to the disciplinary authority of this jurisdiction” and the ELC. ELC 1.2. The real question is whether Respondent’s conduct violated the RPC, not whether it resulted in a dispute with her law partners.

In Rice, 99 Wn.2d at 276-77, the Court declined to impose discipline on a lawyer alleged to have violated DRA 1.1(a) (act involving moral turpitude, dishonesty or corruption) and CPR DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation) by failing to account to his law firm for the receipt of legal fees. The only

testimony at the disciplinary hearing was that of the respondent lawyer himself, who testified that he intended to account for all the funds when a new accounting system was installed and that his conduct was consistent with the policies and practices of the firm. Rice, 99 Wn.2d at 276-78. The Court held that, on this evidence, no violation of the disciplinary rules had been proven. Rice, 99 Wn.2d at 280. Along the way, the Court said that, in disciplinary matters, it should not “involve itself in intrapartnership accounting disputes.” Rice, 99 Wn.2d at 279. But nothing in Rice suggests that where the evidence does establish a violation of the RPC, that violation is outside the Court’s “purview” if it relates to a dispute among lawyers in a firm.

This Court has, in fact, adjudicated such violations. In In re Selden, 107 Wn.2d 246, 256, 728 P.2d 1036 (1986), the Court held that “to protect the integrity of the legal profession and preserve the public’s confidence in it,” it was “necessary” to disbar a lawyer who misappropriated funds from his law firm. In some ways, Selden’s conduct was very similar to Respondent’s: he deposited client checks into his personal bank account, he denied it and “tried to bluff” when confronted with the evidence, and then he underrepresented the amount taken. Selden, 107 Wn.2d at 248-49, 256. But in other ways, Selden’s conduct was very different: he admitted what he did was wrong, he was

remorseful, and, most importantly, he didn't go to another law firm and do the same thing again. Selden, 107 Wn.2d at 250, 255. The Court rejected Selden's reliance on Rice, saying that to characterize his misconduct, which included theft, lying, and concealment, as no more than an "intrapartnership accounting dispute" is "an affront to the profession and its disciplinary procedures." Selden, 107 Wn.2d at 255. The same is true, twice over, of Respondent's conduct.

Respondent suggests there is a "fundamental difference" between a law firm associate and a partner or shareholder. OB at 13. It is conceivable that in some proceeding, that distinction might have some relevance to the determination of some issue. But no legal authority supports the dubious proposition that whether a lawyer is subject to the disciplinary authority of this jurisdiction could turn on whether that lawyer is an associate or an "equity partner" or a "non-equity partner" or an "equity shareholder" or a "non-equity shareholder." Under ELC 1.2, Respondent "is subject to the disciplinary authority of this jurisdiction" because she is "admitted to practice in this jurisdiction." ELC 1.2.

Other courts have disciplined lawyers for their off-the-books practice. In In re Bernstein, 966 So.2d 537 (La. 2007), the court disbarred a lawyer who had his clients pay him directly and failed to turn over the

money to his firm.<sup>6</sup> In Florida Bar v. Arcia, 848 So.2d 296 (Fla. 2003), the court suspended a lawyer who violated his employment agreement, along with Florida's equivalents of RPC 8.4(b) and 8.4(c), by representing clients for his own benefit instead of the firm's.<sup>7</sup> In Supreme Court Bd. of Professional Ethics and Conduct v. Irwin, 679 N.W.2d 641 (Iowa 2004), the court rejected a stipulated suspension and revoked the license of a lawyer who claimed to believe that "he could 'moonlight' and earn extra money" while failing to remit fees to his firm.<sup>8</sup> The court held that the lawyer "could not have reasonably believed that he could 'moonlight' to the extent shown by the evidence given the terms of his employment contract with the firm,"<sup>9</sup> and that revocation was the appropriate sanction because "dishonesty is a trait that should disqualify the dishonest person from the practice of law." Id.

Dishonesty, fraud, deceit, and misrepresentation are no less

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<sup>6</sup> Like Respondent, the lawyer "initially denied any knowledge of the theft" when confronted by his partners. Id. at 539. And like Respondent, he then went to a different firm and did the same thing again. Id. at 539-40.

<sup>7</sup> Like Respondent, the lawyer used firm resources to conduct his "fraudulent activities," and he "refused to admit to his improprieties until the firm confronted him with clear evidence of its knowledge." Id. at 297-98. Unlike Respondent, he made full restitution to the firm. Id. at 298. The court deferred to the recommended three-year suspension but said that "future cases involving theft of firm funds will carry a presumption of disbarment." Id. at 300.

<sup>8</sup> As in this case, there was "evidence of an intentional concealment of his diversion of attorney fees from the firm." Id. at 644.

<sup>9</sup> The lawyer had a "verbal agreement" that he would receive a monthly salary plus a percentage of legal fees above a certain threshold. Id. at 642.

disqualifying, and no less within the “purview” of this Court’s disciplinary authority, because the persons deceived and defrauded are the lawyer’s partners rather than her clients. See RPC 8.4(c). Under ELC 1.2, Respondent “is subject to the disciplinary authority of this jurisdiction” because she is “admitted to practice in this jurisdiction.” ELC 1.2. The question is whether her conduct violated the RPC, not whether it related to a dispute with her partners.

**C. UNDER APR 19(e)(5), THE HEARING OFFICER PROPERLY EXCLUDED TESTIMONY ABOUT AN ETHICS INQUIRY RESPONDENT CLAIMS TO HAVE MADE**

ODC moved in limine to exclude evidence relating to any ethics inquiry allegedly made to the Washington State Bar Association’s Professional Responsibility Counsel. BF 83 at 21; TR 18. The motion was based on Rule 19(e)(5) of the Admission and Practice Rules (APR), which provides in pertinent part:

No information relating to an ethics inquiry, including the fact that an inquiry has been made, its content, or the response thereto, may be asserted in response to any grievance or complaint under the Rules for Enforcement of Lawyer Conduct, nor is such information admissible in any proceeding under the Rules for Enforcement of Lawyer Conduct.

Without making an offer of proof, Respondent objected on the grounds that such evidence was “pertinent,” and that she didn’t like the rule. TR 19-20. The motion was granted. TR 21. Now, without citation to any

relevant legal authority, Respondent asserts that APR 19(e)(5) is unconstitutional because she claims purports to see “no rational basis” for the rule. OB at 41.

APR 19(e)(5) is a court rule adopted by this Court. A court rule, like a statute, is presumed constitutional, and the party challenging it has the heavy burden of proving its unconstitutionality beyond a reasonable doubt. In re King, 168 Wn.2d 888, 899, 232 P.3d 1095 (2010) (court rule interpreted as a statute); City of Bellevue v. Lee, 166 Wn.2d 581, 585, 210 P.3d 1011 (2009); Amunrud v. Board of Appeals, 158 Wn.2d 208, 215, 143 P.3d 571 (2006). State and federal rule makers have broad latitude to establish evidentiary rules excluding evidence. United States v. Scheffer, 523 U.S. 303, 308, 118 S. Ct. 1261, 140 L. Ed. 2d 413 (1998). In criminal cases, such rules do not abridge a defendant’s right to present a defense so long as they are not arbitrary or disproportionate to the purposes they are designed to serve. Id.

APR 19(e)(5) excludes a class of hearsay evidence with no particular indicia of reliability. It serves the legitimate and important interest of preventing a lawyer such as Respondent from lying about an ethics inquiry without the possibility of being contradicted by the other party to the communication. For in order to preserve the confidentiality of communications between an inquirer and Professional Responsibility

Counsel, the latter is prohibited from making or maintaining any record of the identity of the inquirer, the substance of the inquiry, or the response. APR 19(e)(6)-19(e)(7). Furthermore, testimony about an alleged ethics inquiry is of doubtful relevance anyway, because any information or opinion provided in the course of an inquiry is “the informal, individual view of professional responsibility counsel only,” because “Professional responsibility counsel provides no legal advice or opinions,” and because “the inquirer is responsible for making his or her own decision about the ethical issue presented.” APR 19(e)(4)-19(e)(5). Respondent has failed to prove beyond a reasonable doubt that the rule is arbitrary, disproportionate, or unconstitutional.

**D. TO ESTABLISH THE VIOLATIONS OF RPC 8.4(c) CHARGED IN COUNTS 1 AND 6, ODC WAS NOT REQUIRED TO PROVE THAT RESPONDENT’S CONDUCT WAS UNLAWFUL**

Respondent was charged in Counts 1 and 6 with violating RPC 8.4(b) (criminal act) and 8.4(c) (dishonesty, fraud, deceit or misrepresentation) by “unlawfully appropriating funds belonging to Dorsey [and] Ogletree.” As to Count 1, the hearing officer concluded that Respondent violated both RPC 8.4(b) and 8.4(c) with respect to Dorsey. AFFCLR ¶¶ II.17-18, 21, 23. As to Count 6, the hearing officer concluded that Respondent violated RPC 8.4(c), but not RPC 8.4(b), with

respect to Ogletree. AFFCLR ¶¶ II.22-23. The hearing officer reasoned that except for her misappropriation of the \$2,050 paid by Client P.S., Respondent's conduct did not constitute theft but did constitute dishonesty, deceit, and misrepresentation. AFFCLR ¶¶ II.17-19, 21-23.

Respondent contends that the hearing officer's conclusions concerning RPC 8.4(c) as charged in Counts 1 and 6 must be reversed because ODC was required to prove not only that Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of RPC 8.4(c), but also that her conduct was unlawful; i.e., that it constituted theft. OB at 29-31. As discussed infra, ODC did prove that Respondent committed theft with respect to all the funds she misappropriated from Dorsey and Ogletree, and the hearing officer's conclusion otherwise was in error. But ODC was not required to prove that Respondent committed theft to establish that she violated RPC 8.4(c).

Unlawfulness is not an element of RPC 8.4(c). With respect to the charged violation of RPC 8.4(c) in Counts 1 and 6, the word "unlawful" is surplusage. The well-established rule in criminal cases, with their heightened due process requirements, is that any surplusage in a charging document need not be proven in a bench trial. State v. Benitez, 175 Wn. App. 116, 123–24, 302 P.3d 877 (2013); State v. Hobbs, 71 Wn. App. 419, 423, 859 P.2d 73 (1993). Even if it has included an additional element in

the charging document, the prosecution is required to prove only the statutory elements of the crime. Benitez, 175 Wn. App. at 123-24. Therefore, to establish that Respondent violated RPC 8.4(c), ODC was required to prove only that Respondent's conduct involved dishonesty, fraud, deceit, or misrepresentation, not that it was "unlawful." See Benitez, 175 Wn. App. at 123-24; Hobbs, 71 Wn. App. at 423.

**E. THE EVIDENCE AND THE FINDINGS OF FACT SUPPORT THE HEARING OFFICER'S CONCLUSIONS THAT RESPONDENT VIOLATED RPC 8.4(c) AS CHARGED IN COUNTS 1 AND 6 (MISAPPROPRIATION)**

The hearing officer concluded that Respondent violated RPC 8.4(c) as charged in Counts 1 and 6 by engaging in a pattern of dishonesty, deceit, and misrepresentation by concealing her receipt of legal fees from off-the-books clients from Dorsey and Ogletree. AFFCLR ¶¶ II.21-23. Those conclusions are supported by the following findings of fact, among others: AFFCLR ¶¶ I.6-10, 17-19, 24, 33-34, 39, 46, 49 (Dorsey; Count 1); AFFCLR ¶¶ I.63-67, 69-71, 77-78 (Ogletree; Count 6). Most of those findings are unchallenged. Respondent does not challenge the findings that she represented and received fees from off-the-books clients while at Dorsey and while at Ogletree. Respondent does not challenge the findings that she concealed her representation of those clients from Dorsey and Ogletree. Respondent does not challenge the findings that she retained the

fees she received from those clients instead of turning them over to Dorsey and Ogletree. And Respondent does not challenge the findings that she used the resources of Dorsey and Ogletree to generate the fees that she withheld from them. Those findings are all verities on appeal. Marshall I, 160 Wn.2d at 330.

The only findings of fact that Respondent challenges in even the most general way are those relating to her knowledge of the Dorsey and Ogletree policies regarding off-the-books clients. Respondent claims there is no evidence to support those findings. OB at 16-20. There is, however, substantial evidence in the record that Respondent knew very well what Dorsey's and Ogletree's policies were:

- Respondent had Dorsey's policy manuals, which clearly stated that all compensation received by any lawyer for professional services was the property of Dorsey, that all checks for legal services should be payable to Dorsey, that any check for services made payable to an individual should be immediately endorsed and delivered to Dorsey, and that any cash representing compensation should be immediately delivered to Dorsey. TR 30-35, 48-51, 220-23, 436; EX A-109 at 20, A-110. There was testimony that this was "not an unusual policy" and that it is so obvious that "it goes without saying." TR 58-59. Even so, Dorsey had procedures in place to ensure that lawyers knew the firm's policies. TR 221-23, 436. Respondent expressly agreed to comply with the firm's policies. TR 55-56; EX A-111 at 24.
- Respondent took extraordinary measures to hide her in-office activities from other Dorsey staff members. TR 86, 176, 224-25, 228, 238-40, 437, 440, 442, 515, 520. She directed her secretary not to open her mail, she insisted on having a printer

in her own office, and she refused to allow a secretary to organize her office. TR 86, 176, 224-25, 228, 238-40, 437, 440, 442, 515, 520. The hearing officer could reasonably infer, and did infer, that Respondent took these measures to conceal her off-the-books clients from Dorsey. AFFCLR ¶ I.34.

- Respondent repeatedly lied about her off-the-books practice at Dorsey during her November 8, 2011 meeting with Ken Jorgensen and Kelli Kohout. TR 75-77, 81-82, 84, 89-90, 94, 449-50; EX A-108 at 16. The hearing officer could reasonably infer, and did infer, that Respondent's lies show that she knew what she was doing was prohibited. AFFCLR ¶ I.8.
- At her January 9, 2013 meeting with Christopher Mixon and Charles Baldwin of Ogletree, Respondent expressly admitted that she knew it was wrong to represent off-the-books clients while at Ogletree and not turn over her fees to the firm. TR 546-47, 797-98.
- At the same meeting, Respondent repeatedly lied about her off-the-books practice at Ogletree. TR 546-49, 797-99. The hearing officer could reasonably infer, and did infer, that Respondent's lies show that she knew what she was doing was prohibited. AFFCLR ¶ I.65.

A lawyer's mental state is proven through circumstantial evidence from which the hearing officer may draw reasonable inferences. In re Jones, 182 Wn.2d 17, 41-42, 338 P.3d 842 (2014); Cohen I, 149 Wn.2d at 332; see also RPC 1.0A(f) (actual knowledge may be inferred from the circumstances). The hearing officer was not required to accept self-serving professions of ignorance by a witness whom he found "not credible." AFFCLR ¶ I.96; In re Ferguson, 170 Wn.2d 916, 934, 246 P.3d 1236 (2011). The hearing officer's findings about Respondent's mental

state are supported by substantial evidence, and must therefore be upheld.

Marshall I, 160 Wn.2d at 330.

**F. THE EVIDENCE AND THE FINDINGS OF FACT SUPPORT THE HEARING OFFICER'S CONCLUSIONS THAT RESPONDENT VIOLATED RPC 8.4(c) AS CHARGED IN COUNTS 2 AND 7 (MISREPRESENTATION)**

The hearing officer concluded that Respondent violated RPC 8.4(c) as charged in Counts 2 and 7 by “repeatedly and insistently lying” to both Dorsey and Ogletree when questioned about her off-the-books clients, the extent of her off-the-books practice, and the amount of the fees that she withheld from the two law firms. AFFCLR ¶¶ II.24-27. Those conclusions are supported by the following findings of fact, among others: AFFCLR ¶¶ I.26-35, 37-41 (Dorsey; Count 2), AFFCLR ¶¶ I.80-82, 85-91 (Ogletree; Count 7). Those findings are supported by substantial evidence in the record, including the following:

- At her November 8, 2011 meeting with Ken Jorgensen and Kelli Kohout of Dorsey, Respondent falsely denied having any off-the-books clients at all. TR 75-76.
- When asked about a particular off-the-books client with whom she had very recently met, Respondent falsely denied accepting fees from the client or even knowing the client until she was confronted with documentary evidence that her denials were false. TR 76-77, 449; EX A-108 at 16.
- This process “replayed itself over and over again.” Respondent would only admit to accepting fees from off-the-books clients after she was confronted with documentary evidence she could not deny. TR 76-77, 81-82, 84.

- Respondent continued to minimize the amount of fees she had accepted from off-the-books clients, eventually misrepresenting that it was “no more than” \$5,000, when in fact it was substantially more than \$56,000. TR 77, 89-90, 94, 450; EX A-129.
- In her December 9, 2011 Separation Agreement, Respondent falsely represented that she had received a total of \$56,700 from her off-the-books clients while at Dorsey. EX A-129 at 291, 308-309. In fact, Respondent had received substantially more than that, including the \$2,050 she received from P.S. for work performed by Dorsey. TR 90, 92, 94, 201-02, 283, 721-24, 728; EX A-103-04, A-129 at 291, 309.
- In her December 2012 telephone conference with Christopher Mixon of Ogletree, Respondent told Mr. Mixon that Dorsey had approved of her off-the-books practice, and that she had been terminated because Dorsey learned of her talks with Ogletree. TR 784-85. In fact, Respondent had never asked for permission to represent clients off-the-books, EX A-108 at 17, and she knew that she was terminated because of her off-the-books practice. TR 84-85, 87-89, 451-52; EX A-108 at 17, A-129.
- At her January 9, 2013 meeting with Christopher Mixon and Charles Baldwin of Ogletree, Respondent falsely claimed, again, that she had been “expressly authorized” to represent off-the-books clients while at Dorsey. TR 546-47, 797.
- Initially, Respondent tried to persuade Mr. Mixon and Mr. Baldwin that she had absolutely “never” represented off-the-books clients while at Ogletree, because she knew it was wrong. TR 546-47, 797-98.
- When she was shown documentary proof that she had in fact represented a particular off-the-books client, Respondent falsely claimed it was the “only time.” TR 548, 798.
- Just as she had done at Dorsey, Respondent repeated this process again and again. Respondent would only admit to accepting fees from off-the-books clients after she was

confronted with documentary evidence she could not deny. TR 547-49, 798-99.

Respondent does not present any argument as to why any specific findings are unsupported. She does nothing more than argue her version of the facts, while ignoring adverse evidence. She “denies lying to anyone,” arguing that the undisputedly false statements she made repeatedly to both Dorsey and Ogletree were just “mistakes” that she made because she was “flustered.” OB at 32. Not even Respondent’s own testimony, which the hearing officer found “not credible,” AFFCLR ¶ I.96, supports her version of the facts. Respondent presented no evidence that she was “flustered” or that her false statements were mere “mistakes;” she simply never addressed the issue at all. TR 898-940. More importantly, however, the hearing officer’s findings of fact cannot be overturned based simply on Respondent’s alternative explanation of the facts, even if there were some evidence to support it. Marshall II, 167 Wn.2d at 67.

Much of Respondent’s argument is not even relevant to the violations charged in Counts 2 and 7. Respondent argues that she did not know about Dorsey’s and Ogletree’s policies, despite the hearing officer’s findings and ample evidence to the contrary. OB at 35-36; see supra at 30-33. But whatever Respondent knew or didn’t know about Dorsey’s

and Ogletree's policies, she certainly knew about her off-the-books clients and about the extent of her off-the-books practice, and she lied repeatedly about both. Respondent also makes the truly remarkable assertion that her repeated lies were "not an ethics violation" because she had no contractual duty not to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. OB at 33-34. But nothing in RPC 8.4(c) or the many cases applying it even suggests that the duty to refrain from dishonesty, fraud, deceit, and misrepresentation applies only where there is some special contractual duty not to lie and deceive. That duty is imposed by RPC 8.4(c) itself. "Simply put, the question is whether the attorney lied. No ethical duty could be plainer." In re Dann, 136 Wn.2d 67, 77, 960 P.3d 416 (1998).

**G. THE EVIDENCE AND THE FINDINGS OF FACT SUPPORT THE HEARING OFFICER'S CONCLUSIONS THAT RESPONDENT VIOLATED RPC 8.4(b)**

Under RPC 8.4(b), it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. One such criminal act is theft.

Under RCW 9A.56.020(1), "theft" means:

- (a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

(b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

(c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

The hearing officer concluded that Respondent committed theft and violated RPC 8.4(b) by misappropriating the \$2,050 paid to her by Client P.S. AFFCLR ¶¶ II.18-19.

Those conclusions are supported by the following findings of fact, among others: AFFCLR ¶¶ I.49-52. Those findings are all unchallenged and therefore verities on appeal. OB at 5; Marshall I, 160 Wn.2d at 330. According to the evidence and the hearing officer's unchallenged findings of fact, Client P.S. paid Respondent \$2,050 shortly before Dorsey terminated her employment. Respondent never completed the work for which P.S. paid her, but Dorsey completed it without compensation. P.S. told Respondent that Dorsey had completed the work and that she should contact Dorsey about returning the unearned fees he paid her. Respondent never returned the unearned fees to Dorsey or to P.S.

On these facts, the \$2,050 that Respondent never returned was "property . . . of another." RCW 9A.56.020(1). Whether it was the property of P.S. or Dorsey, it clearly was not the property of Respondent, and she knew it. She knew that she never earned it, she knew that Dorsey

earned it, and she knew that she should contact Dorsey about returning it. Her retention of that money was “wrongful” and “unauthorized” because she was in no way entitled to it. RCW 9A.56.020(1). The hearing officer could reasonably infer, and did infer, that Respondent kept the money with intent to deprive another of that money. Respondent therefore committed theft as defined in RCW 9A.56.020(1).

Respondent contends that she did not wrongfully exert unauthorized control over the money because Dorsey released any claim to the money when it executed the Separation Agreement. OB at 22-25. The operative language in the Separation Agreement is as follows:

Effective upon payment of the sums specified in this Agreement, Dorsey . . . releases and discharges Placide . . . from all liability for all claims Dorsey may have against Placide . . . .

EX A-129 at 288-89. It is undisputed that Respondent never made payment of the sums specified in the Agreement; therefore the release of liability has never become effective.

The Separation Agreement also contains the following misrepresentation by Respondent about the “total” amount of fees she received from “outside” clients while at Dorsey:

Placide represents that from the time she joined Dorsey through the Separation Date, she individually received and retained a total of fifty-six thousand seven hundred dollars (\$56,700) for legal work, through checks, cash, or wire

transfers. A detailed listing of clients and payments is attached hereto as Exhibit A.

EX A-129 at 291 (emphasis added). Contrary to Respondent's representation that the payments listed on Exhibit A represented the "total," it is undisputed that the \$2,050 she received from P.S. for legal work she never performed was not listed on Exhibit A, even though she received it shortly before she executed the Separation Agreement. It is also undisputed that Respondent never informed Dorsey that she received that money. Given Respondent's affirmative misrepresentation, the hearing officer correctly found that her "stated belief that she was excused by the Separation Agreement" from turning over this money to Dorsey was "not reasonable" and "not credible." AFFCLR ¶¶ I.54-55.

But the more fundamental flaw in Respondent's argument is this: the release of a claim for theft, or for any other wrongful act, does not mean that the theft or other wrongful act did not occur. Litigants and potential litigants release claims for all manner of wrongful acts all the time, but it does not follow that the acts never occurred or that they were not wrongful. It only means that the party released no longer has any legal liability to the party granting the release. The Separation Agreement, if and when it ever became effective, would release Respondent from legal liability to Dorsey for all claims, including claims for theft or conversion,

that Dorsey might have against Respondent. But Respondent's duties under the RPC are not defined by the claims that Dorsey may or may not be able to assert against her. The Separation Agreement simply has no bearing on whether or not Respondent committed theft.

**H. THE EVIDENCE AND THE FINDINGS OF FACT SUPPORT THE HEARING OFFICER'S CONCLUSIONS THAT RESPONDENT VIOLATED RPC 1.15A(f) AND RPC 1.5(a) AS CHARGED IN COUNTS 4 AND 5**

Under RPC 1.15A(f), a lawyer must promptly pay or deliver to a client or third person property that person is entitled to receive. Under RPC 1.5(a), a lawyer must not charge or collect an unreasonable fee. A fee is unreasonable if the lawyer never performs the services for which it is paid. See, e.g., E. Bennett et al., Annotated Model Rules of Professional Conduct 78 (ABA Center for Professional Responsibility, 8th Edition 2015) ("It is by definition unreasonable to charge for work not done."). The hearing officer concluded that Respondent violated RPC 1.15A(f) and RPC 1.5(a) as charged in Counts 4 and 5. AFFCLR ¶¶ II.30-32. Those conclusions are supported by the following unchallenged findings of fact, among others: AFFCLR ¶¶ I.49-53.

Respondent contends she had no duty under RPC 1.15A(f) to turn over the fees from P.S. that she never earned because Dorsey, which did earn them, released her "from all liability for all claims Dorsey may have"

against her. OB at 27-28; EX A-129 at 288. The argument fails for the same reasons discussed above in connection with RPC 8.4(b). The release has never become effective, and, more importantly, Respondent's duties under RPC 1.15A(f) are not defined by the claims that Dorsey could assert against her if it ever did become effective.

Respondent appears to contend that the fee she collected for work she never performed was not unreasonable because someone else, Dorsey, performed it in her stead. OB at 28. Following Respondent's reasoning, a lawyer can just take the client's money and run, without violating the RPC, so long as some other, more ethical, lawyer steps in to mitigate the harm to the client by doing the work for free. While this would surely be a boon to dishonest lawyers everywhere, it is not a result to be desired or required by RPC 1.5(a). It should be self-evident that the reasonableness of a lawyer's fee depends not just on the amount of the fee but on whether that lawyer earned it.

**I. THE EVIDENCE AND THE FINDINGS OF FACT COMPEL THE CONCLUSION THAT RESPONDENT VIOLATED RPC 8.4(b) AS CHARGED IN COUNTS 1 AND 6**

The evidence, the findings of fact, and the conclusions of law discussed above, as well as the ABA Standards discussed below, all support the hearing officer's recommendation that Respondent be disbarred. But there is yet another ground that supports the hearing

officer's recommendation, which can be affirmed on any grounds supported by the record. See, e.g., State v. Costich, 152 Wn.2d 463, 477, 98 P.3d 795 (2004) (reviewing court may affirm lower court's ruling on any grounds supported by the record). The evidence and the hearing officer's findings of fact compel the conclusion that Respondent did commit theft as charged in Counts 1 and 6, notwithstanding the hearing officer's conclusions to the contrary. AFFCLR ¶¶ II.1-23. Those conclusions rest on two misconceptions.

First, the conclusions rest on the misconception that the thefts at issue in Counts 1 and 6 are thefts of Respondent's services. AFFCLR ¶¶ II.4-5, 8-10. But both the pleadings and the proof make clear that the thefts at issue are the theft of "funds belonging to Dorsey" (Count 1) and the theft of "funds belonging to Ogletree" (Count 6), not the theft of Respondent's services. BF 18 at ¶¶ 66, 122 (emphasis added).

Second, the conclusions rest on the misconception that the phrase "property . . . of another" in RCW 9A.56.020(1) "cannot be intended" to cover property that has not yet been delivered to the party entitled to receive it. AFFCLR ¶¶ II.7, 14-15. The law is clearly to the contrary, as shown by RCW 9A.56.010(23):

"Wrongfully obtains" or "exerts unauthorized control"  
means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where the use is unauthorized by the partnership agreement.

(Emphasis added.) In AFFCLR ¶ II.7, the hearing officer concluded, in effect, that theft can only mean theft by taking, as defined in RCW 9A.56.010(23)(a). But under RCW 9A.56.010(23)(b) and 9A.56.010(23)(c), theft may also be accomplished by appropriating property to one's own use where that property has never been delivered to the party entitled to receive it.

That is exactly what Respondent did, according to the evidence and the hearing officer's findings of fact. She had property (legal fees) in her possession to which other persons (Dorsey and Ogletree) were entitled. She appropriated that property to her own use. And in the case of Dorsey, her use of that property was specifically "unauthorized by the

partnership agreement,” which provides that “all compensation received by any partner for professional services is the property of the Partnership and shall be turned over to the Partnership.” RCW 9A.56.010(23)(c); EX A-110. She therefore committed theft and violated RPC 8.4(b) as charged in Counts 1 and 6.

**J. THE COURT SHOULD AFFIRM THE DISCIPLINARY BOARD’S UNANIMOUS RECOMMENDATION OF DISBARMENT**

The ABA Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) (ABA Standards) govern sanctions in lawyer discipline cases.<sup>10</sup> Marshall I, 160 Wn.2d at 342. First, the Court considers whether the Board applied the correct presumptive sanction, considering the ethical duty violated, the lawyer's mental state, and the actual or potential injury caused by the lawyer's misconduct. Id. Next, the Court considers the aggravating or mitigating factors. Id. Finally, the Court determines whether the degree of unanimity among Board members and the proportionality of the sanction justify a departure from the Board's recommendation. Id.

**1. The Presumptive Sanction for Respondent’s Violations of RPC 8.4(b) and RPC 8.4(c) is Disbarment**

The hearing officer correctly determined that under ABA

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<sup>10</sup> The applicable ABA Standards are attached as Appendix B.

Standards std. 5.11(b), disbarment is the presumptive sanction for Respondent's violations of RPC 8.4(c) because "Respondent's ongoing pattern of dishonesty, deceit, and misrepresentations was so extensive and consistent that it 'seriously adversely reflects on [her] fitness to practice.'" AFFCLR ¶¶ III.11-12. The record amply supports that determination.<sup>11</sup>

Respondent contends that the hearing officer's analysis is "fatally flawed" because he used the word "knowingly" instead of "intentionally" in AFFCLR ¶ III.6. OB at 41. It is abundantly clear, however, that the hearing officer found Respondent's dishonest and deceitful conduct to be intentional. It is clear both from his discussion of ABA Standards std. 5.11(b) at AFFCLR ¶¶ III.10-12, and from the many factual findings he made about Respondent's pattern of lying and concealment. See, e.g., AFFCR ¶¶ I.34-35, 81, 86, 96, 99, II.21-22, 24, 26, III.7-8, 10, IV.1. A lie is, by definition, "an intentionally false statement." New Oxford American Dictionary 1008 (3d ed. 2010) (emphasis added).

The hearing officer incorrectly determined that the presumptive sanction for Respondent's violations of RPC 8.4(b) is suspension under ABA Standards std. 5.12. AFFCLR ¶¶ III.4-5. The correct standard is

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<sup>11</sup> The hearing officer determined that the presumptive sanction for Respondent's violations of RPC 1.15A(c)(2) as charged in Counts 3 and 8 was reprimand under ABA Standards std. 4.13, and that the presumptive sanction for Respondent's violations of RPC 1.15A(f) and 1.5(a) as charged in Counts 4 and 5 was suspension under ABA Standards stds. 4.12 and 7.2. AFFCLR ¶¶ III.13-27. Respondent does not argue that those determinations were incorrect.

5.11(a), which provides that disbarment is the presumptive sanction when “a lawyer engages in serious criminal conduct, a necessary element of which includes . . . misappropriation or theft.” Respondent misappropriated more than \$56,700 from Dorsey, and she misappropriated at least \$15,000, and probably much, more from Ogletree. AFFCLR ¶¶ I.33, 93; EX A-208 at 328; TR 557-59, 804. These sums far exceed the \$5,000 threshold for first degree theft under RCW 9A.56.030. Indeed, even the \$2,050 paid by P.S. far exceeds the \$750 threshold for a felony under RCW 9A.56.040. It cannot seriously be argued that a felony theft is not “serious” criminal conduct for the purpose of imposing lawyer sanctions.

## **2. The Aggravating and Mitigating Factors Support Disbarment**

The hearing officer found six aggravating factors: (1) a pattern of misconduct, (2) multiple offenses, (3) false statements or other deceptive practices during the disciplinary process, (4) refusal to acknowledge the wrongful nature of the conduct, (5) substantial experience in the practice of law, and (6) indifference to making restitution. AFFCLR ¶ IV.1. In addition, Respondent openly expressed a complete lack of remorse. AAFFCR ¶ I.100; TR 927, 939.

Respondent challenges only one aggravating factor: false statements or other deceptive practices during the disciplinary process. Given the presumptive sanction of disbarment for multiple violations, the other aggravating factors, and the lack of any significant mitigating factors, the presence or absence of this one aggravating factor hardly matters. Nevertheless, it is supported by the record and indicative of Respondent's deceptive conduct. Throughout her questioning of witnesses, Respondent persistently tried to introduce alleged facts where there was no evidence of those alleged facts, and where all the actual evidence contradicted them. AFFCLR ¶ I.97; TR 110-11, 119, 194, 294, 297-98, 304-06, 615, 649-50, 825-26, 833-34. The hearing officer could reasonably find, and did find, that this was a "deceptive practice."

The hearing officer found only one mitigating factor: absence of a disciplinary record. AFFCLR ¶ IV.2. That factor is "not significant" given the seriousness of Respondent's ethical violations. In re Schwimmer, 153 Wn.2d 752, 763, 108 P.2d 761 (2005). The hearing officer also noted that Respondent had "offered" to return to P.S. the fee he paid her for work that she never performed, but found that Respondent "undermined any credit this might warrant" by failing to turn over the fee to Dorsey, which performed the work in her stead. AFFCLR ¶ IV.2.

### **3. The Board's Unanimous Recommendation Is Entitled to Great Deference**

The Board's decision in this case was unanimous. The recommendation of a unanimous Board is entitled to great deference and should be affirmed unless the Court can articulate a specific reason for rejecting it. In re Day, 162 Wn.2d 527, 538, 173 P.3d 915 (2007). Respondent has provided no reason for the Court to reject the Board's unanimous recommendation.

### **4. The Board's Unanimous Recommendation Is Not Disproportionate**

In proportionality review, the Board considers whether the recommended sanction is disproportionate by comparing the case at hand with other similar cases in which the same sanction was either approved or disapproved. In re Cohen (Cohen II), 150 Wn.2d 744, 763, 82 P.3d 224 (2004). Respondent bears the burden of proving that the recommended sanction is disproportionate. In re Kagele, 149 Wn.2d 793, 821, 72 P.3d 1067 (2003). Respondent cites only one case to support her assertion that the Board's unanimous recommendation is disproportionate: In re Christopher, 153 Wn.2d 669, 105 P.3d 976 (2005).

Christopher is not a similar case, either in the nature of the misconduct, the aggravating and mitigating factors, or the Board recommendation to which the Court deferred. Unlike Respondent, whose

conduct involved a pattern of theft, concealment, and lying at two different law firms, Christopher's misconduct involved a single case, the first one she ever handled on her own, in which she created false documents to cover up a mistake that might have exposed her law firm to a malpractice claim. Id. at 674-75, 688. The Court found seven mitigating factors<sup>12</sup> that "far outweigh[ed]" the two aggravating factors.<sup>13</sup> Id. at 688. A divided Board recommended an 18-month suspension, with at least three of the four dissenters favoring a lesser sanction. Id. at 686. The Court found "no specific reason to depart from the Board's recommendation," and therefore adopted it. Id. at 688. Given these distinctions, Christopher provides no support for Respondent's claim that the Board's unanimous recommendation is disproportionate.

##### **5. The Only Appropriate Sanction is Disbarment**

Ordinarily, the presumptive sanction should be imposed unless there are aggravating or mitigating factors sufficiently "compelling" to justify a departure. Cohen I, 149 Wn.2d at 339. Here, there are multiple ethical violations for which the presumptive sanction is disbarment,

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<sup>12</sup> No prior disciplinary record, timely good faith effort to make restitution or to rectify the consequences of the misconduct, full and free disclosure to the disciplinary board with a cooperative attitude, inexperience in the practice of law, good character and reputation, other sanctions, and substantial remorse. Id. at 683, 686.

<sup>13</sup> Dishonest or selfish motive and multiple offenses. Id. at 681-83.


multiple aggravating factors, and no compelling mitigating factors to justify a departure from the presumptive sanction and the Board's unanimous recommendation. The only appropriate sanction is disbarment.

#### IV. CONCLUSION

Respondent has clearly demonstrated "a willingness to repeatedly and consistently lie" and "a lack of the degree of honesty and integrity necessary" to be a lawyer. AFFCLR ¶ V. That she could steal from and lie to her partners at one law firm, then go to another law firm and do exactly the same thing, and then continue to deny any wrongdoing, shows that she is truly incorrigible and unfit to practice law. The Court should affirm the Board's unanimous recommendation of disbarment.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of September, 2017.

OFFICE OF DISCIPLINARY COUNSEL

  
\_\_\_\_\_  
Scott G. Busby, Bar No. 17522  
Disciplinary Counsel

# APPENDIX A

MAY 05 2016

**BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION**

**In re**

**CARLENE M. PLACIDE,  
Lawyer (WSBA No. 28824)**

**Public No. 13#00097**

**HEARING OFFICER'S AMENDED  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND RECOMMENDATION**

The matter was heard on October 26, 27, 28 and 29, 2015. Respondent Carllene M. Placide represented herself, and the Washington State Bar Association Office of Disciplinary Counsel was represented by M. Craig Bray and Erica Temple.

**I. FINDINGS OF FACT**

The following facts were proven by a clear preponderance of the evidence, except when a specific finding indicates otherwise:

1. The First Amended Formal Complaint, a copy of which is attached hereto, charged Respondent Carllene M. Placide ("Respondent") with misconduct as set forth therein.
2. Respondent was admitted to the practice of law in Washington on March 10, 1999.

3. Prior to November 2006 Respondent was an attorney with the Seattle firm now known as Foster Pepper PLLC.

***Facts related to Respondent's conduct while at Dorsey Whitney***

4. From November 2006 to November 2011, Respondent was a non-equity partner in the Seattle Office of the law firm of Dorsey & Whitney, LLP ("Dorsey").

5. Respondent's practice at Dorsey emphasized labor and employment, and immigration law on behalf of businesses.

6. As reflected in Exhibit 109, during the time Respondent was a Dorsey partner, the firm's policies required that, with limited exceptions not relevant here, "all compensation received by any Dorsey partner, associate, or other attorney for professional services is the property of the firm."

7. It was further Dorsey's policy that (a) if an attorney received a check for legal services "that is the property of the firm" and the check was made payable to an individual, it should be endorsed immediately to the order of Dorsey and delivered to Dorsey's finance department; and (b) if an attorney received cash for legal services that "is the property of the firm," the cash should be delivered immediately to the finance department.

8. A clear preponderance of the evidence, including but not limited to Respondent's denials of having received such fees, shows that Respondent was aware of Dorsey's policy that all fees received for providing legal services should be turned over to the firm.

9. For several years prior to November 2011, while a "non-equity partner" at Dorsey, Respondent represented individual immigration clients who hired her personally, and who paid her directly, without disclosing those representations to Dorsey.

10. Clients for whom Respondent performed legal services without opening a file for them at her law firm, and whose fees Respondent retained personally, will generally be referred to as "outside clients."

11. The preponderance of evidence at the hearing was that Respondent's outside clients understood that they were hiring Respondent personally, and intended for their payments to belong to Respondent personally and not Dorsey.

12. While there was some circumstantial evidence of possible client confusion, there was no substantial evidence that outside clients from whom Respondent received fees while a Dorsey non-equity partner intended that their payments go to Dorsey instead of to Respondent, personally.

13. The sole outside client who had paid Respondent for legal services, who testified at the hearing, when asked "Were you hiring in your mind Ms. Placide personally or as a Dorsey & Whitney lawyer?" responded that, "In my mind I saw her more of a personal lawyer that came through references of Dorsey & Whitney."

14. Respondent's legal work on immigration matters at Dorsey was ordinarily on behalf of corporate clients.

15. The outside clients for whom Respondent performed services were often individuals, and not the type of immigration client that Dorsey would ordinarily seek or represent as a paying client. But Respondent also performed legal work on a number of occasions on behalf of outside clients that were business entities such as corporations, and there was no evidence that Dorsey would have considered those clients undesirable or declined to represent them as paying clients.

16. Respondent generally attempted to perform a kind of "conflicts check" when she accepted engagements on behalf of outside clients while at Dorsey, by reviewing the names of firm clients that were available to Dorsey attorneys in the firm's electronic systems. That information failed to include all names in Dorsey's conflicts check system, and was wholly inadequate to identify potential conflicts of interest that could be created by Respondent's representation of outside clients.

17. The evidence showed that Respondent on more than one occasion met with outside clients at Dorsey's offices. There was no evidence how frequently that was done.

18. Respondent often used a personal e-mail address in communicating with outside clients, but she also frequently used her Dorsey e-mail address for both sending, and receiving, communications with her outside clients. When Respondent used her Dorsey e-mail account in communicating with outside clients, her name at the bottom usually identified her as "Partner," followed by Dorsey's name, address and telephone/fax numbers

19. Respondent often used personal letterhead for her communications on behalf of outside clients. But Respondent also, on many occasions, used Dorsey letterhead when communicating with immigration authorities on behalf of outside clients, in which she identified herself as a Dorsey attorney and the client as a Dorsey client. Immigration authorities on a number of occasions responded with letters directed to Respondent as a Dorsey attorney, at Dorsey's office address.

20. Respondent performed services for outside clients exclusively on a flat fee, or fixed fee, basis.

21. There was no evidence that Respondent represented outside clients without entering into some form of written engagement letter or agreement.

22. Respondent's engagement letters or agreements with outside clients failed to include the language required by RPC 1.5(f)(2) in order for an attorney to treat flat fees or fixed fees as earned upon receipt, rather than being required to deposit them into a trust account.

23. Respondent did not have an IOLTA account, and retained, or deposited into a personal bank account, all payments she received from outside clients.

24. Respondent did not turn any of the payments she received from outside clients over to Dorsey.

25. In November 2011, Dorsey learned that Respondent was representing some clients without providing the fee payments to Dorsey.

26. On November 8, 2011 Dorsey's Regional Office Administrator and one of its partners met with Respondent at Dorsey's Seattle office ("the November 8 meeting"). Respondent was not advised prior to the meeting that its purpose was to question her about her representation of outside clients.

27. When asked in the November 8 meeting if she had represented clients outside of her capacity as a Dorsey attorney and without opening a Dorsey client file for them, Respondent repeatedly and falsely denied having done so.

28. In the November 8 meeting, Respondent initially denied having represented clients outside of her firm practice. Several times when presented with an e-mail or other document evidencing contact with a specific outside client, Respondent acknowledged having represented that specific client, gave an excuse for having neglected or forgotten to mention it, and denied any representation of other outside clients.

29. When asked if she had received payments from outside clients, Respondent repeatedly and falsely denied having done so.

30. Several times after denying having personally received fees, when presented with emails or other documentation evidencing that she had received a specific payment, Respondent then acknowledged having received that payment, but claimed it was an exceptional occasion which she had forgotten, or for which she had an excuse. This process was repeated several times.

31. When asked how much she had received in total from outside clients, Respondent truthfully said she could not say exactly how much, because she did not have any records with her.

32. When pressed for estimates of how much she had received in fees from outside clients, Respondent acknowledged that it was "at least \$5,000."

33. Respondent had in fact received more than \$56,700 from outside clients, and while the acknowledgment that it was "at least \$5,000" was literally true, by understating the order of magnitude of the fees she had received from outside clients Respondent's response was intentionally and materially misleading.

34. Notwithstanding that she sometimes conducted e-mail communications on her Dorsey email account, received communications related to outside clients at her Dorsey office, and left occasional documents related to an outside client in her Dorsey office, all of which were susceptible of being discovered by Dorsey, Respondent attempted to conceal, and did conceal, her representation of outside clients from Dorsey.

35. Respondent also attempted to conceal the fact of, and then the scope of, her representation of outside clients, in her November 8, 2011 meeting with Dorsey representatives.

36. On or around November 14, 2011, Dorsey advised Respondent that her partnership with Dorsey was terminated.

37. Respondent and Dorsey on December 9, 2011, executed a Separation Agreement and Mutual Release (the "Separation Agreement"), with an attached Exhibit A listing those outside clients from whom Respondent acknowledged having received fees, and the amounts received from each, in the total amount of \$56,700.

38. The list of payments Respondent acknowledged having received from outside clients in Exhibit A consisted only of payments for which Dorsey had documentary evidence, usually in the form of emails, of the payment.

39. Respondent had received materially more than \$56,700 from outside clients as of November 22, 2011. For example, Respondent received \$450 from Client P.S. on or around October 22, 2011, and an additional \$2,050 from Client P.S. nearly a week later, on or around October 28, 2011. Respondent represented in Exhibit A that she had received the \$450 from client P.S., while failing to disclose the more-recent, and larger, \$2,050 payment received just 11 days before the November 8, 2011 meeting.

40. The actual amount of fees Respondent received from outside clients while a Dorsey partner was not established by the evidence.

41. By knowingly understating the amount of fees she had received from outside clients in her Separation Agreement with Dorsey, Respondent intentionally mislead Dorsey as to the amounts she had received.

42. Respondent agreed in the Separation Agreement to pay Dorsey \$50,923 on or before December 30, 2012, which represented \$56,700 in fees Respondent acknowledged having received from outside clients, plus certain benefits due or paid to Respondent and minus November partnership income that had been paid to her.

43. In a letter dated November 12, 2012, before the deadline for Respondent paying the amount due under the Separation Agreement, Dorsey filed an ethics complaint against Respondent with the Washington State Bar Association based on Respondent's representation of outside clients and related matters.

44. At some point after Dorsey filed its ethics complaint against Respondent, Dorsey agreed with Respondent that she did not have to pay the amount agreed to in the Separation Agreement until after the ethics complaint had been resolved.

45. Respondent had not, as of the time of the hearing in this matter, paid any amounts due to Dorsey under the Separation Agreement.

*Client A*

46. Prior to January 2011 Respondent received a flat fee of \$7,000 from an outside client, Client A, which Respondent had deposited into a personal account, and not a trust account.

47. In January 2011 Client A asked Respondent for a refund of \$3,825 of that \$7,000 flat fee, advising that he needed the refund by January 21, 2011.

48. Respondent agreed to client A's request to refund, and refunded \$1,910 of the requested amount before January 21, 2011. But Respondent did not, or was unable to, pay the balance of the refund to the client until on or around February 2, 2011.

*Client P.S.*

49. Respondent agreed to represent outside Client P. S. on an immigration matter for a \$2,500 flat fee. This is the same Client P.S. referred to above, who had paid Respondent personally \$450 on or around October 22, 2011, and \$2,050 on or around October 28, 2011.

50. Respondent's work on Client P.S.'s case was not completed at the time Dorsey terminated her partnership November 14, 2011. Dorsey attorneys other than Respondent completed the work on behalf of Client P.S.

51. Respondent around June 2012 contacted Client P.S., and learned that his work had been completed by Dorsey attorneys. Respondent then asked Client P.S. if she should return his fee. Client P.S. responded that since the work had been completed by Dorsey attorneys Respondent should give his fee to Dorsey.

52. Respondent had not as of the time of the hearing in this matter given any of Client P.S.'s \$2,500 fee to Dorsey.

53. Respondent testified she did not turn those funds over to Dorsey because she believed Client P.S.'s \$2,500 fee to be covered by her Separation Agreement with Dorsey.

54. Respondent's stated belief that she was excused by the Separation Agreement from turning Client P.S.'s entire \$2,500 fee over to Dorsey was not reasonable, and therefore was not credible, because Respondent had affirmatively misrepresented in the agreement that she received only \$450 from Client P.S.

55. It was not reasonable for Respondent to believe that Dorsey, by agreeing to defer payment of the \$450 fee from Client P.S. that she had disclosed in the Settlement Agreement, also agreed to defer her obligation to turn over to the firm the \$2,050 she had not disclosed in the Settlement Agreement.

***Facts related to Respondent's conduct while at Ogletree, Deakins***

56. Prior to November 2011, while she was a partner with Dorsey, Respondent had contacts with representatives of the law firm of Ogletree, Deakins, Nash, Smoak & Stewart

("Ogletree") about potentially leaving Dorsey and becoming employed by, or a shareholder with, Ogletree.

57. There was no evidence that Dorsey was aware of Respondent's contacts with Ogletree.

58. There was no evidence that Dorsey terminated Respondent for any reason other than her representation of outside clients and lack of candor when confronted about it.

59. After she was terminated by Dorsey, Respondent falsely told Ogletree representatives that Dorsey had terminated her because Dorsey had learned of her discussions about moving to Ogletree.

60. Ogletree in a letter dated December 5, 2011 offered Respondent employment as a shareholder with the firm.

61. Respondent accepted Ogletree's offer, and on or about December 15, 2011 began working as a shareholder at Ogletree.

62. There was no evidence that Ogletree had a written policy prohibiting shareholders from representing clients in legal matters outside of the firm, or personally retaining the fees generated by work for outside clients.

63. Despite the absence of a written policy, Ogletree intended and expected its shareholders to provide legal services exclusively for Ogletree clients, and to turn over to the firm all fees generated by providing legal services to any clients.

64. Respondent knew Ogletree expected and intended that upon becoming an Ogletree shareholder, she would perform legal services exclusively for Ogletree clients, and turn over to the firm all fees generated by her providing legal services to any clients.

65. Evidence that Respondent knew Ogletree expected, and intended, that she would perform legal services exclusively on behalf of Ogletree clients included: (1) Respondent had been an attorney for 12 years, including employment as a partner or shareholder with two other large law firms before Ogletree; (2) the Hearing Officer can take judicial notice that, absent express agreement otherwise, it is the custom for law firms to require their partners and shareholders to perform legal services exclusively for firm clients; (3) Respondent had just been terminated by a law firm specifically for representing undisclosed outside clients; (4) when Respondent undertook to represent outside clients while at Ogletree, she did not inquire whether Ogletree permitted that practice; (5) Respondent made statements to Ogletree representatives, both before and after Ogletree confronted her about representing outside clients, demonstrating she was aware that representing undisclosed outside clients was improper and not permitted; and (6) when asked by Ogletree whether she was representing or receiving fees from outside clients, Respondent repeatedly denied having done so.

66. While she was an Ogletree shareholder, Respondent performed legal services for at least 7 or 8 outside clients, from whom she received fees that she retained personally, without opening a file for them at Ogletree or disclosing the representations to Ogletree.

67. Respondent acknowledged that she had personally received a minimum of \$10,000 from outside clients for legal services while she was an Ogletree shareholder.

68. There was no evidence of how much more than \$10,000 Respondent had personally received from outside clients for her legal services while she was an Ogletree shareholder.

69. Respondent used both a personal e-mail account and her Ogletree email account in communicating with outside clients and with third parties about outside clients' matters.

Those emails sometimes identified Respondent as an Ogletree attorney, and provided the firm's address and contact information.

70. There was no substantial evidence presented that Respondent used Ogletree letterhead in communicating with clients or third parties.

71. Respondent used Ogletree resources to a limited extent in representing outside clients, such as her business telephone, Ogletree's Federal Express account, her Ogletree e-mail account, and Ogletree office space in which she did work on behalf of, and met with, outside clients.

72. Respondent did not perform a conflicts check when she undertook the representation of outside clients at Ogletree.

73. There was no direct evidence, and little circumstantial evidence, that any of Respondent's outside clients believed they were hiring Ogletree rather than Respondent personally, or intended that any of the fees they paid Respondent go to, or belong to, Ogletree.

74. None of Respondent's engagement letters with outside clients while she was an Ogletree shareholder were offered in evidence or testified to, and there is no evidence whether or not those letters contained the language required by RPC 1.5(f)(2).

75. Respondent did not discuss with her outside clients, either at Dorsey or Ogletree, whether their fees would or would not be placed in a trust account; where the funds would be deposited; the fact that their flat fee arrangement did not alter the client's right to terminate the client-lawyer relationship; or that they could be entitled to a refund of a portion of the fee if the representation was not completed.

76. Respondent did not maintain a trust account to hold outside clients' payments while she was an Ogletree attorney.

77. Respondent deposited the funds she received from outside clients into her personal bank accounts, and intended to retain those funds personally, without disclosing them to Ogletree.

78. In June 2012 the Ogletree attorney with oversight responsibilities for Ogletree's Seattle office, Jathan Janove, met with Respondent in Seattle to discuss a lack of production by Respondent and other issues. Ogletree was not aware at that time that Respondent was representing outside clients. Mr. Janove also interviewed a paralegal in the Seattle office, who told him that about 30 percent of her (the paralegal's) time was spent helping people in the community with their immigration status and immigration papers. When Mr. Janove reported this to Respondent, she agreed with him that the paralegal's representation of clients outside of the firm was a problem, and was totally unacceptable.

79. On or about November 29, 2012, Respondent advised Ogletree personnel that Dorsey had filed an ethics complaint against her with the Washington State Bar Association, and provided a copy of Dorsey's complaint to Ogletree.

80. On or around December 2, 2012 Ogletree's in-house General Counsel, Christopher Mixon, who had reviewed the Dorsey complaint, conducted a telephone interview with Respondent to discuss the Dorsey ethics complaint.

81. Respondent lied repeatedly to Mr. Mixon in the December 2, 2012 telephone interview, falsely stating that Dorsey representatives had approved her conduct in representing outside clients, and that Dorsey terminated her because it learned she was in discussions with Ogletree.

82. Respondent in the telephone interview with Mr. Mixon also said she believed the Dorsey Seattle office was financially struggling and had filed the ethics complaint in an effort to

better position it to compete against her and Ogletree for business. There was no reasonable basis for such a belief. Respondent knew she was terminated for other reasons, and this statement was knowingly false.

83. At Ogletree's request Respondent provided Mr. Mixon a copy of her Dorsey Separation Agreement.

84. After seeing the Dorsey Separation Agreement, Ogletree reviewed Respondent's Ogletree e-mails, which disclosed that Respondent had performed legal services for at least 7 or 8 outside clients.

85. On January 9, 2013, Mr. Mixon, and a member of Ogletree's Board of Directors, Charles Baldwin, met with Respondent in Seattle's Ogletree offices to discuss Respondent's representation of outside clients ("the January 9, meeting"). They did not disclose in advance that that was the purpose of the meeting.

86. Respondent lied repeatedly to Ogletree's representatives in the January 9 meeting.

87. Respondent repeated falsely in the January 9 meeting that Dorsey had authorized her to represent outside clients, and had terminated her because it learned of her contacts with Ogletree.

88. Respondent acknowledged in the January 9 meeting that she knew she was prohibited from representing outside clients at Ogletree.

89. Respondent in the January 9 meeting initially denied entirely that she had represented any outside clients while at Ogletree.

90. As the meeting continued, Respondent said that she had done some outside work for a family member which was just a continuation of work she had begun at Dorsey, but falsely stated that that was the only work she had done for an outside client.

91. As the January 9 meeting continued, when the Ogletree representatives showed Respondent emails that proved she had represented a particular outside client, Respondent acknowledged that representation, explained that it was an isolated incident, and denied that there were others. That process repeated itself several time, with Respondent acknowledging her representation of individual outside clients and receiving fees from those clients, one at a time, only when confronted with documents evidencing the representation.

92. On or about January 13, 2013, Respondent and Ogletree executed a Settlement Agreement and General Release ("Ogletree Settlement Agreement"). While Respondent felt pressured by Ogletree's representatives to sign the Settlement Agreement, Respondent voluntarily signed it.

93. In the Ogletree Settlement Agreement, Respondent promised to pay to Ogletree the larger of an amount equal to the sum of all payments she received from the outside clients during the period she was employed at Ogletree, or \$15,000, payable at the rate of \$3,000 per month commencing 21 days after the date of the Agreement.

94. As of the time of the hearing in this matter, Respondent had made none of the agreed-upon payments to Ogletree.

95. Respondent adamantly denied throughout the hearing that she had done anything wrong by representing outside clients while a Dorsey partner or Ogletree shareholder. Respondent testified that because she did the work she was hired to do at Dorsey and Ogletree, she believed she was free to do what she wished on her "own" time.

96. Respondent was not a credible witness. For example, Respondent testified that she was unaware of Dorsey's policies about representing outside clients or turning all fees for legal services over to the firm; that Dorsey personnel had authorized her to represent outside clients; and that she believed she was permitted to engage in representation outside clients at Ogletree. That testimony was not credible in light of Respondent's efforts to conceal those representations from both firms, her denials of having done so when questioned about it by both firms, and virtually all of the surrounding circumstances.

97. Respondent, who represented herself at the hearing, frequently included false or misleading assertions in the form of questions she posed to witnesses, in effect testifying herself, while not under oath, to such facts, such as:

- To a Dorsey witness:

*"Do you recall at the end of the [November 8, 2011 meeting] . . . you . . . said, 'These non-firm clients, it's not -- it's not a big deal; but the fact that you're planning to leave and take members of the firm, that's where your partners don't trust you.' Do you recall that?"*

The evidence was overwhelming that Dorsey did not know of Respondent's contacts with Ogletree when it terminated her. Respondent's representation that the witness had made such a statement was false.

- To a Dorsey witness:

*"Would it surprise you to know that this file [for outside client A.S.] was opened after you and I met in your office about the ability to represent individuals outside the firm?"*

The evidence was overwhelming that no Dorsey personnel had authorized Respondent to represent outside clients. Respondent's representation that there had been such a meeting was false.

- To a Dorsey witness:

“Do you recall that during the initial opening of our discussion you mentioned that the firm is aware of my search for another firm, that I was looking to move my practice and take—potentially take the Seattle labor and employment group with me?

All the surrounding circumstances and testimony of other witnesses contradicts Respondent’s suggestion that Dorsey thought she was actively searching for another firm at the time of this interview. Dorsey clearly initiated the interview with Respondent because it had discovered she was representing outside clients.

- To an Ogletree witness:

“Do you recall, Mr. Baldwin, that I called the [January 9, 2013] meeting, that I repeatedly would ask you to come visit us in the Seattle office to discuss the office plans for expansion and the support we needed from Ogletree Deakins?

The evidence was clear that the January 9, 2013 meeting was prompted by Ogletree’s receipt of a copy of Dorsey’s complaint to the Washington State Bar Association and subsequent investigation of Respondent’s emails which disclosed work for non-firm clients, and was not called by Respondent. The foregoing are just examples of what was a repeated practice by Respondent of making false representations in the course of her questions posed to witnesses at the hearing.

98. Respondent refused to acknowledge that the reason Dorsey terminated her was because she had represented undisclosed outside clients and personally retained the fees for that work. Instead, Respondent insisted that Dorsey terminated her, and even *said* that it was terminating her, because she was discussing employment with Ogletree,

99. Respondent refused to acknowledge that the reason Ogletree terminated her was because she had represented undisclosed outside clients and personally retained the fees for that work, or had lied to Ogletree. Instead, Respondent claimed that her work for outside clients was just an excuse for Ogletree to justify the termination, testifying that the reason for the

termination was because Ogletree was "a southern old all white boy sort of firm," and her termination "was really premised on an ulterior racist, discriminatory -- whatever you want to classify it" attitude.

100. Respondent testified that she had no remorse for her conduct at Dorsey or Ogletree, and that her only remorse was for spending so much time working for the firms and outside clients at the expense of time with her family.

## II. CONCLUSIONS OF LAW

### Counts 1 and 6: Theft<sup>1</sup>

1. Respondent's agreements with Dorsey and Ogletree obliged her to perform legal services for compensation exclusively for those law firms' clients while she was a partner or shareholder with each firm.

2. Respondent, as a Partner with Dorsey and shareholder with Ogletree also owed fiduciary duties to each of those firms and her co-partners or shareholders, including the duty to turn over to her firm and her partners all compensation she received for performing legal services.

3. Respondent's fiduciary duties to Dorsey and Ogletree arose only because of her contractual relationship as a partner or shareholder of those firms.

4. Dorsey and Ogletree did not by virtue of their partnership or shareholder agreements, or Respondent's fiduciary duties to them, become the legal owners of Respondent's ability to perform legal services. They became the owners of the *contractual right* to require

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<sup>1</sup> Count 1: "By unlawfully appropriating funds belonging to Dorsey, Respondent violated RPC 8.4(b) by committing crimes of theft (RCW 9A.56.040 and/or RCW 9A.56.050 and/or RCW 9A.56.060)"

Count 6: "By unlawfully appropriating funds belonging to Ogletree, Respondent violated RPC 8.4(b) by committing crimes of theft (RCW 9A.56.040 and/or RCW 9A.56.050 and/or 9A.56.060), and/or violated . . . RPC 8.4(i)."

Respondent to provide legal services exclusively for firm clients, and the right to receive all fees generated by Respondent's legal services.

5. Respondent's legal services were her own property interest. While Respondent contracted with Dorsey, and Ogletree, respectively, to perform legal services exclusively for the benefit of those firms, they did not thereby become the owners of her services. For example, Dorsey and Ogletree could not have sold Respondent's legal services to a third party and compelled her to work for that third party, as they could if they were the owners of those services.

6. The crime of theft is defined as wrongfully obtaining or exerting unauthorized control over "the property or services of another." RCW 9A.56.020(1):

"Theft" means:

- (a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof. . . ;
- (b) By color or aid of deception to obtain control over the property or services of another or the value thereof. . . ; or
- (c) To appropriate lost or misdelivered property or services of another, or the value thereof. . . .

7. It is the Hearing Officer's conclusion that "property or services of another," as used in defining the crime of theft, cannot be intended to cover property or services to which another is contractually entitled but which has not yet been delivered to them.

8. Respondent's legal services did not become the "property of another" as that term is used in RCW 9A.56.020, simply because she contracted to perform legal services exclusively for Dorsey or Ogletree clients.

9. When Respondent provided her legal services to outside clients, she was exerting control over her own services, not the "services of another."

10. Respondent's conduct in performing services for outside clients breached her contractual and fiduciary duties to her respective law firms, but did not constitute the theft of her services.

11. Respondent had a contractual obligation and fiduciary duty to turn over to Dorsey and Ogletree all fees she received for performing her legal services while she was a partner or shareholder with those firms.

12. While Respondent's e-mails to clients and others sometimes identified Respondent as a partner of Dorsey or shareholder of Ogletree, and there was correspondence to third parties but not directly to any clients on Dorsey firm letterhead, the preponderance of the evidence at the hearing was that the outside clients for whom Respondent provided legal services intended to hire Respondent personally, rather than the law firm of which she was a partner or shareholder.

13. The preponderance of the evidence was also that the outside clients from whom Respondent received legal fees intended to pay their fees directly to Respondent, and not to Respondent's law firm, with one exception created by special circumstances, discussed further below.

14. Respondent's law firms owned the contractual right to be paid all of the fees Respondent received from outside clients, but as long as the outside clients intended to pay them to Respondent, and not the firms, the firms did not own the fees themselves before they were turned over to the firm.

15. Notwithstanding an attorney's contractual relationship with a firm, if a client agrees to engage the attorney personally outside of the attorney's relationship with her firm, and

pays fees to the attorney intending that the money belongs to the attorney, those fees are not "the property of" the law firm before being turned over to the firm.

16. Respondent's receipt and retention of fees for her legal services to outside clients breached her contractual obligations and fiduciary duties to Dorsey and Ogletree, but did not constitute the crime of theft by obtaining or exerting control over "the property of another."

17. With one exception, the evidence at hearing did not establish by a clear preponderance of the evidence that Respondent (1) had committed the crime of theft by providing her legal services to outside clients, or retaining the fees they paid for those services, or (2) violated RPC 8.4(b) or RPC 8.4(i).

18. The exception is \$2,050 of the \$2,500 fee that Client P.S. paid to Respondent. When Client P.S. told Respondent she should turn the \$2,500 fee he had paid Respondent over to Dorsey because Dorsey had done the work for which that fee was paid, and Respondent failed to do so, Respondent wrongfully exerted unauthorized control over Dorsey's property or appropriated misdelivered property belonging to Dorsey in violation of RCW 9A.56.020(1)(a) and (c), thereby committing the crime of theft. But because Dorsey had agreed to defer receipt from Respondent of \$450 of Client P.S.'s fee pending the outcome of Dorsey's grievance, Respondent's retention of that portion of the fee did not violate RCW 9A.56.020(1).

19. Respondent's theft of the \$2,050 from Dorsey violated RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty and trustworthiness).

20. Respondent's theft of the \$2,050 from Dorsey did not violate RPC 8.4(i) (committing an act involving moral turpitude or corruption).

**Counts 1 and 6: Dishonesty, deceit, misrepresentation<sup>2</sup>**

21. Respondent engaged in an ongoing pattern of misrepresentations, dishonesty and deceit by performing legal services for outside clients while she was a Dorsey partner, retaining the fees for those services, and concealing her receipt of those fees from Dorsey.

22. While the Hearing Officer has concluded that Respondent did not “unlawfully” appropriate “funds belonging to Ogletree,” Respondent engaged in misrepresentations, dishonesty and deceit by performing legal services for outside clients while she was an Ogletree shareholder, retaining the fees for those services, and concealing her receipt of those fees from Ogletree.

23. Respondent’s conduct involved dishonesty, deceit and misrepresentation, and violated RPC 8.4(c).

**Counts 2 and 7: Misrepresentation<sup>3</sup>**

24. By repeatedly and insistently lying to Dorsey representatives when asked about the extent of her legal services for outside clients, and the amount of fees she received for those services, Respondent engaged in conduct involving dishonesty, deceit and misrepresentation.

25. Respondent violated RPC 8.4(c) by misrepresenting the extent of her legal services for outside clients and the amount of fees she received for those services while a Dorsey partner.

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<sup>2</sup> **Count 1:** “By unlawfully appropriating funds belonging to Dorsey, Respondent violated . . . RPC 8.4(c).”

**Count 6:** “By unlawfully appropriating funds belonging to Ogletree, Respondent . . . violated RPC 8.4(c)”

<sup>3</sup> **Count 2:** “By misrepresenting the extent of her ‘off-the-books’ practice to Dorsey personnel Respondent violated RPC 8.4(c)”

**Count 7:** “By misrepresenting to Ogletree that she did not represent outside clients while employed at Ogletree and/or the number of outside clients she represented while at Ogletree, Respondent violated RPC 8.4(c).”

26. By repeatedly lying to Ogletree representatives in response to their questions about her activities in representing outside clients while employed at Ogletree, and by misrepresenting the number of outside clients she had performed services for, Respondent engaged in dishonest and deceitful conduct.

27. Respondent violated RPC 8.4(c) by misrepresenting to Ogletree representatives that she did not represent outside clients while employed at Ogletree, and the number of such outside clients.

#### **Counts 3 and 8:<sup>4</sup> Trust account violations**

28. Respondent violated RPC 1.15A(c)(2) by failing to deposit flat fees she received from clients into a trust account while she was a Dorsey partner, without entering into written fee agreements that complied with RPC 1.5(f)(2).

29. Respondent violated RPC 1.15A(c)(2) by failing to deposit flat fees she received from clients into a trust account while she was an Ogletree shareholder, without entering into written fee agreements that complied with RPC 1.5(f)(2).

#### **Count 4<sup>5</sup>: Failure to return property**

30. When Client P.S. told Respondent that Dorsey was entitled to the \$2,500 flat fee he had paid her, and Respondent thereafter failed to deliver \$2,050 of that fee to Dorsey, Respondent violated RPC 1.15A(f) by failing to deliver property to which a third party was entitled.

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<sup>4</sup> **Count 3:** "By failing to deposit advance flat fees in trust, as is required in the absence of a flat fee agreement that conforms with RPC 1.5(f)(2), Respondent violated RPC 1.15A(c)(2)."

**Count 8:** "By failing to deposit advance flat fees in trust, as is required in the absence of a flat fee agreement that conforms with RPC 1.5(f)(2), Respondent violated RPC 1.15A(c)(2)."

<sup>5</sup> **Count 4:** "By failing to return unearned portions of Mr. Singhal's fee on termination of representation and/or in failing to promptly return unearned portions of Client A's fee, Respondent violated RPC 1.15A(f) and/or RPC 1.16(d)."

### **Count 5<sup>6</sup>: Charging unreasonable fee**

31. While Respondent did offer to return the fee to Client P.S. and the client declined that offer (in favor of Respondent giving that fee to Dorsey), Respondent knew that the fee had not been earned by her and the offer to return it did not, alone, satisfy her obligation to not charge a reasonable fee.

32. By keeping \$2,500 in legal fees paid to her by Client P.S. without performing the work she agreed to perform on his behalf, Respondent charged an unreasonable fee in violation of RPC 1.5(a).

### **III. PRESUMPTIVE SANCTIONS**

#### **Count 1: Theft From Dorsey**

1. Respondent acted knowingly in committing the crime of theft by exerting unauthorized control over the \$2,050 of Client P.S.'s fee which was not covered by Respondents Settlement Agreement with Dorsey, and by appropriating \$2,050 of that fee which had been misdelivered to her.

2. Respondent caused Dorsey actual injury in the amount of \$2,050.

3. Standard 5.1 of the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("ABA Standards") applies to this count. Standards 5.11 and 5.12 apply when the conduct at issue constitutes a crime:

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft . . . ; or

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<sup>6</sup> **Count 5:** "By keeping \$2,500 in legal fees paid to her by Mr. Singhal without performing the work she agreed to perform on his behalf, Respondent charged an unreasonable fee in violation of RPC 1.5 (a)."

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

4. While Respondent's conduct did constitute theft, Respondent's failure to turn \$2,050 of Client P.S.'s fee over to Dorsey cannot be characterized as "serious criminal conduct," so Standard 5.11(a) does not apply to this violation.

5. Standard 5.12 applies to Respondent's theft by retaining \$2,050 of Client P.S.'s fee, making the presumptive sanction for that violation **suspension**.

**Counts 1, 2, 6 and 7: Dishonesty, Deceit, Misrepresentation**

6. Respondent acted knowingly in committing conduct involving dishonesty, deceit and misrepresentations alleged in Counts 1, 2, 6 and 7.

7. Respondent's violations of RPC 8.4(c) alleged in Counts 1 and 6, in the course of performing legal services for outside clients while she was a Dorsey partner and Ogletree shareholder, retaining the fees for those services, and concealing her receipt of those fees from Dorsey and Ogletree caused:

- a. Actual injury to both Dorsey and Ogletree by
  - (1) depriving them of fees to which they were entitled by contract;
  - (2) requiring the firms to expend a substantial amount of attorney and staff time and resources toward investigating after the fact the scope and nature of Respondent's representations of outside clients, for which the firms were potentially liable; and
  - (3) requiring the firms to expend a substantial amount of uncompensated legal services in order to ensure that all outside clients for whom Respondent was performing legal services were properly concluded.

b. Actual injury to Ogletree by causing the firm to expend attorney time and expenses in hiring and establishing a Seattle office based on misrepresentations about the reasons she had been terminated by Dorsey;

c. Potential injury to Dorsey and Ogletree by exposing the firms to the risk of representing parties with conflicted interests, and the risk of being disqualified from existing representations due to conflicts with one of Respondent's outside clients; and

d. Potential injury to Dorsey and Ogletree clients by exposing them to the risk that their lawyers might have to withdraw from representing them if a conflict existed with one of Respondent's outside clients.

8. Respondent's violations of RPC 8.4(c) alleged in Counts 2 and 7, in misrepresenting the fact, extent and number of her outside client representations, caused Dorsey and Ogletree

a. actual injury by concealing the extent of her breaches of contract and violations of fiduciary duties, thereby preventing the firms from recovering from her the amounts she actually owed to them for those breaches; and

b. potential injury, in that if Respondent had succeeded in misleading them about her conduct, she would have continued to engage in such conduct causing additional actual and potential injuries described in ¶4(a)-(d), above.

9. Standard 5.1 of the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("ABA Standards") applies to these counts:

**5.1 Failure to Maintain Personal Integrity.**

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or

importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

5.14 Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

10. Respondent's conduct in representing outside clients at Dorsey and Ogletree and lying to Dorsey and Ogletree representatives about that conduct was not criminal, so either Standard 5.11(b) or 5.13 applies to Respondent's violations of RPC 8.4(c).

11. Respondent's ongoing pattern of dishonesty, deceit and misrepresentations was so extensive and consistent that it "seriously adversely reflects on the lawyer's fitness to practice."

12. Standard 5.11(b) applies to Respondent's violations of RPC 8.4(c) alleged in Counts 1, 2, 6 and 7, making the presumptive sanction for those violations **disbarment**.

#### **Counts 3 and 8: Trust Account Violations**

13. Respondent's conduct in failing to deposit client flat fee payments into a trust account, without providing the clients with the information and disclosures required by RPC 15(f)(2), was negligent.

14. Respondent's failure to deposit a flat fee into a trust account caused one client actual injury, when Respondent was unable to refund that client unearned fees within the time the client said the funds were needed.

15. Respondent's failures to deposit clients' flat fees into a trust account caused clients potential injury by exposing them to the risk that if their representation was not completed Respondent might be unable to timely refund the unearned portion of their fee, or might even have been unable to refund it at all.

16. Standard 4.1 of the ABA Standards applies to these counts:

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

17. Standard 4.13 applies to Respondent's violations of RPC 1.15A(c)(2) alleged in Counts 3 and 8. The presumptive sanction for Respondent's violations is a **reprimand**.

**Count 4: Failure to return property**

18. Respondent's failure to deliver \$2,050 of Client P.S.'s fee to Dorsey after Client P.S. told Respondent it should be given to Dorsey was knowing.

19. Respondent caused Dorsey actual injury in the amount of \$2,050 by failing to follow Client P.S.'s instructions for the use of his funds.

20. Standard 4.1 of the ABA Standards, set forth above, is the closest Standard that applies to Respondent's violation of RPC 1.15A(f). Standard 4.1 does not apply exactly to the

facts of Count 4, because while Respondent knowingly dealt improperly with client funds, Respondent did not convert funds belonging to the client, and the client did not suffer injury; Respondent converted funds belonging to Dorsey, and it was Dorsey that suffered the injury.

21. Standard 4.11 does not apply because Respondent did not convert client funds.

22. Standard 4.12 (dealing improperly with client property) is the Standard that most closely reflects the nature of Respondent's violation of RPC 1.15A(f).

23. The presumptive sanction for Respondent's violation of RPC 1.15A(f) is **suspension**.

#### **Count 5: Charging unreasonable fee**

24. Respondent's retention of Client P.S.'s \$2,500 fees without performing the work to earn those fees, thereby charging an unreasonable fee, was knowing.

25. Standard 7.0 of the ABA Standards, "Violations of Duties Owed as a Professional," applies to Respondent's violation of RPC 1.5(a) as charged in Count 5. That Standard provides, when the conduct is knowing:

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

26. Standard 7.2 rather than 7.1 applies here, because Respondent's conduct in retaining Client P.S.'s fee cannot be characterized as causing "serious injury" to Dorsey.

27. The presumptive sanction for Respondent's violation of RPC 1.5(a) is **suspension**.

#### **IV. AGGRAVATING AND MITIGATING FACTORS**

1. The following aggravating factors set forth in Section 9.22 of the ABA Standards are present and apply in this case:

*Dishonest or selfish motive.* Respondent's conduct was dishonest, but dishonesty is inherent in many of the violations at issue so cannot be an "aggravating" factor.

*Pattern of misconduct.* Respondent's engaged in a consistent, ongoing, pattern of dishonesty in dealing with her partners and co-shareholders, which pattern continued during Respondent's representations during the hearing itself.

*Multiple offenses.* The multiplicity of offenses is self-evident in the above findings and conclusions.

*False statements, or other deceptive practices during the disciplinary process.* Respondent repeatedly made false representations of fact in presenting questions posed to witnesses at the hearing, while asking them to agree with her factual representations.

*Refusal to acknowledge wrongful nature of conduct.* Respondent acknowledged that she had failed to provide clients with the information required by the Rules of Professional Conduct as a condition to treating flat fees as earned on receipt, but otherwise adamantly denied that she did anything wrong in her representation of outside clients while she was a partner with Dorsey and a shareholder with Ogletree. Respondent refused to even acknowledge that Dorsey terminated her because of her representation of outside clients, or because of her lying to the firm, but instead insisted throughout the hearing that Dorsey fired her because it had learned that she was in discussions with Ogletree notwithstanding that all evidence was to the contrary. Respondent likewise refused to acknowledge that Ogletree terminated her because of her representation of outside clients, or dishonesty, and blamed her firing instead on racial or gender bias. (Respondent is a black female.)

*Substantial experience in the practice of law.* Respondent had been an attorney with large firms for roughly 10 years before the first violations alleged against her in this action.

*Indifference to making restitution.* While Dorsey had informally agreed to defer Respondent's payment of amounts she had agreed to in settlement with the firm, Respondent as of the time of the hearing had made no effort to pay Ogletree any of the amounts she had agreed to pay the firm.

2. The following mitigating factors apply in this case:

*Absence of a prior disciplinary record.* There was no evidence that Respondent, over the course of her 16 years as an attorney, had engaged in any form of misconduct prior to, or other than, the conduct at issue in this case.

*Timely good faith effort to make restitution.* Respondent had voluntarily offered to return the fee paid to her by Client P.S., although she undermined any credit this might warrant by then failing to turn those funds over to Dorsey. This factor applies to Count 5, only.

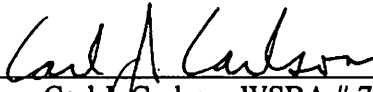
## V. RECOMMENDED SANCTION

The Hearing Officer recommends that Respondent be disbarred.

When the gravamen of violation is dishonesty, deceit, and misrepresentation that does not rise to the level of a crime, the severity of the presumptive sanction turns on whether or not the conduct at issue "seriously adversely reflects on the lawyer's fitness to practice." While the dishonesty evidenced in this case did not involve misrepresentations to a court or a client, it did evidence a willingness to repeatedly and consistently lie to persons to whom Respondent owed fiduciary duties, on important matters. Respondent's dishonest conduct was consistent over at least three years, and occurred in different situations involving different people. The extent and consistency of the dishonest conduct reflects not an occasional lapse in Respondent's judgment or trustworthiness, but a regular course of behavior, evidencing a lack of the degree of honesty and integrity necessary to be an attorney.

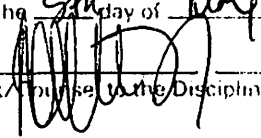
Consequently the Hearing Officer concludes that Respondent should be disbarred from the practice of law.

May 3, 2016

  
Carl J. Carlson, WSBA # 7157  
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the H.O.'s amended PBE, LOR & Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
in Carlene Plorde to Respondent's Counsel  
at 411 W. 3rd St. Seattle, WA 98101 by Certified/first class mail  
postage prepaid on the 3rd day of May, 2016

  
Clerk/Assistant to the Disciplinary Board

**FILED**

MAY 21 2014

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**CARLENE M. PLACIDE,**  
  
Lawyer (Bar No. 28824).

Proceeding No. 13#00097

FIRST AMENDED FORMAL COMPLAINT

Under Rule 10.3 of the Rules for Enforcement of Lawyer Conduct (ELC), the Washington State Bar Association (the Association) charges the above-named lawyer with acts of misconduct under the Rules of Professional Conduct (RPC) as set forth below.

**ADMISSION TO PRACTICE**

1. Respondent Carlene M. Placide was admitted to the practice of law in the State of Washington on March 10, 1999.

**FACTS REGARDING COUNTS 1-5**

2. From November 2006 to November 2011, Respondent was a partner in the Seattle Office of the law firm of Dorsey & Whitney, LLP ("Dorsey").

3. Respondent's practice focused on immigration law.

4. Since at least 2007, Dorsey has maintained its personnel manuals and policies on

1 its online intranet system, which is available to all Dorsey employees.

2 5. From November 2006 to November 2011, Respondent was a partner in the  
3 Seattle Office of the law firm of Dorsey & Whitney, LLP ("Dorsey").

4 6. Respondent's practice focused on immigration law.

5 7. Since at least 2007, Dorsey has maintained its personnel manuals and policies on  
6 its online intranet system, which is available to all Dorsey employees.

7 8. Among those policies and procedures is a "Professional Responsibility Manual"  
8 that includes a section entitled "Rights to Fees for Professional Services."

9 9. The policy states that all compensation received by any Dorsey partner or associate  
10 for professional services is the property of Dorsey.

11 10. The policy states that checks received for legal services should be made payable to  
12 the firm.

13 11. The policy states that if an employee receives a check for legal services that is the  
14 property of the firm and the check is made payable to an individual payee, it should be endorsed  
15 immediately by the payee to the order of Dorsey and delivered to Dorsey's finance department.

16 12. The policy further states that if an employee receives cash for legal services that is  
17 the property of the firm, the cash should be delivered immediately to the finance department.

18 13. Respondent was aware of Dorsey's policies as to the rights to fees for professional  
19 services.

20 14. In early November 2011, Dorsey learned that Respondent was representing some  
21 immigration clients without providing the fee payments to Dorsey.

22 15. For a period of time prior to November 2011, Respondent had been receiving legal  
23 fees from "off-the-books" clients who hired and paid her separately from her practice at Dorsey.

1 16. These fee payments were deposited in Respondent's personal bank accounts, rather  
2 than in Dorsey's accounts.

3 17. Respondent met with some of the "off-the-books" clients at Dorsey's offices.

4 18. In representing one or more of the "off-the-books" clients, Respondent used  
5 Dorsey's email account.

6 19. In representing one or more of the "off-the-books" clients, Respondent used cover  
7 letters with Dorsey's letterhead.

8 20. On November 8, 2011, shortly after learning of Respondent's "off-the-books"  
9 practice, Dorsey's Regional Office Administrator and one of its partners ("Dorsey personnel")  
10 interviewed Respondent.

11 21. At the interview, Respondent told Dorsey personnel that she had received a total of  
12 \$5,000 in fees from individual clients that she had then deposited in her personal accounts.

13 22. In truth and in fact, Respondent had received at least \$56,700 in fees from  
14 individual clients.

15 23. At the time Respondent represented to Dorsey personnel that the total she received  
16 from her "off-the-books" practice was \$5,000, she knew this to be untrue.

17 24. Respondent made the misrepresentation to Dorsey personnel to conceal from them  
18 the full extent of her "off-the-books" practice.

19 25. On November 14, 2011, Dorsey terminated Respondent.

20 26. In early December 2011, Dorsey and Respondent executed a Separation Agreement.

21 27. In the agreement, Respondent acknowledged that while she was employed at  
22 Dorsey, she individually received and retained \$56,700 for legal work that was paid for through  
23 checks, cash or wire transfers.

1 28. Respondent was not entitled to retain the \$56,700.

2 29. Respondent intentionally misappropriated the \$56,700 knowing that she was not  
3 entitled to the funds.

4 30. Respondent intended to deprive Dorsey of funds that belonged to it.

5 31. In the Separation Agreement, Respondent promised to pay Dorsey \$50,923, which  
6 represented the client payments Respondent received plus several benefits paid by Dorsey on  
7 behalf of Respondent minus November partnership income owed to Respondent.

8 32. Respondent promised to make the payment to Dorsey by December 30, 2012.

9 33. As of the date of this complaint, Respondent has not paid the \$50,923 to Dorsey.

10 *Client A*

11 34. Client A was one of Respondent's "off the books" clients.<sup>1</sup>

12 35. In 2010, Respondent agreed to represent Client A in a citizenship matter.

13 36. Client A paid Respondent \$7,000.

14 37. The fee was paid in advance and had not been earned when paid.

15 38. Respondent deposited Client A's funds in a personal account.

16 39. Respondent and Client A did not have a written agreement stating that the fee  
17 would be the lawyer's property immediately upon receipt, and would not be deposited in a trust  
18 account.

19 40. Respondent and Client A did not have a written agreement stating that Client A  
20 may be entitled to a refund of a portion of the fee if the agreed upon legal services were not  
21 completed.

22 41. As of January 11, 2011, Respondent had not earned the full fee.

---

23 <sup>1</sup> To protect the privacy of this client, who has not filed a grievance, we are referring to the client as  
24 "Client A."

1 42. On January 11, 2011, Client A sent an email to Respondent with a request for a  
2 refund of the legal and filing fees that Respondent had not earned or used in Client A's case.

3 43. Client A listed \$2,500 as the amount of fees Respondent had earned, and \$675 as  
4 the amount that Respondent had paid in filing fees on behalf of Client A.

5 44. Client A calculated the refund owing as \$3,825.

6 45. Client A stated in the email that Client A needed the full refund by January 21,  
7 2011 so that Client A could pay back a loan to a friend.

8 46. Respondent did not dispute Client A's accounting and agreed to the refund of  
9 unearned fees.

10 47. On January 11, 2011, Respondent refunded \$1,910.

11 48. In two emails to Client A on January 11, 2011, Respondent told Client A that she  
12 would not be able to refund the remaining \$1,915 until February 4, 2011, notwithstanding that  
13 Client A requested that all the funds be refunded by January 21, 2011.

14 49. Respondent refunded the remaining \$1,915 to Client A on or around February 2,  
15 2011.

16 ***Client Pulkit Singhal***

17 50. Pulkit Singhal was one of Respondent's "off-the-books" clients.

18 51. On October 27, 2011, Respondent provided Mr. Singhal with an "Attorney  
19 Representation Engagement Letter" which outlined the terms of her representation.

20 52. The letter states that that Respondent would represent Mr. Singhal on his U.S.  
21 citizenship matter at the "flat fee rate of US\$2,500.00."

22 53. The letter states that payment should be made to Carlene M. Placide.

23 54. The letter does not state that the fee would be the lawyer's property immediately  
24

1 upon receipt and would not be placed in a trust account.

2 55. The letter does not state that the client may be entitled to a refund of a portion of the  
3 fee if the agreed upon legal services are not completed.

4 56. Respondent received two checks from Mr. Singhal.

5 57. The first check was for \$450 and was dated October 22, 2011.

6 58. The second check was for \$2,010 and was dated October 28, 2011.

7 59. Both checks are made payable to "Carllene Placide."

8 60. Respondent deposited both checks in a personal account at Bank of America.

9 61. Respondent never performed the services for Mr. Singhal for which she had been  
10 hired.

11 62. After Respondent's termination from Dorsey on November 14, 2011, other lawyers  
12 at Dorsey completed the immigration work for which Mr. Singhal had hired Respondent.

13 63. Mr. Singhal told Respondent that she should pay the fee to Dorsey because Dorsey  
14 had performed the work on his case.

15 64. As of the date of this complaint, Respondent has not refunded Mr. Singhal's fee to  
16 him.

17 65. As of the date of this complaint, Respondent has not paid Mr. Singhal's fees to  
18 Dorsey.

19 **COUNT 1**

20 66. By unlawfully appropriating funds belonging to Dorsey, Respondent violated RPC  
21 8.4(b) by committing crimes of theft (RCW 9A.56.040 and/or RCW 9A.56.050 and/or RCW  
22 9A.56.060), and/or violated RPC 8.4(c), and/or violated RPC 8.4(i).

23 **COUNT 2**

24 67. By misrepresenting the extent of her "off-the-books" practice to Dorsey personnel,

1 Respondent violated RPC 8.4(c).

2 **COUNT 3**

3 68. By failing to deposit advance flat fees in trust, as is required in the absence of a flat  
4 fee agreement that conforms with RPC 1.5(f)(2), Respondent violated RPC 1.15A(c)(2).

5 **COUNT 4**

6 69. By failing to return unearned portions of Mr. Singhal's fee on termination of  
7 representation and/or in failing to promptly return unearned portions of Client A's fee,  
8 Respondent violated RPC 1.15A(f) and/or RPC 1.16(d).

9 **COUNT 5**

10 70. By keeping \$2,500 in legal fees paid to her by Mr. Singhal without performing the  
11 work she agreed to perform on his behalf, Respondent charged an unreasonable fee in violation  
12 of RPC 1.5(a).

13 **FACTS REGARDING COUNTS 6-8**

14 ***Misappropriation of Funds***

15 71. In the fall of 2011, Respondent, while Respondent was still employed at Dorsey,  
16 she met with the Managing Shareholder at the law firm of Ogletree, Deakins, Nash, Smoak &  
17 Stewart ("Ogletree").

18 72. Respondent and the Ogletree Managing Shareholder discussed the possibility of  
19 Respondent joining Ogletree.

20 73. After Respondent was terminated by Dorsey, she contacted Ogletree.

21 74. Respondent informed Ogletree that she had been terminated by Dorsey.

22 75. Respondent told Ogletree that the reason she had been terminated by Dorsey was  
23 that Dorsey had become aware of her discussions with Ogletree.

24 76. After this contact, Ogletree offered Respondent employment at Ogletree.

1 77. On or about December 15, 2011, Respondent began working as a shareholder at  
2 Ogletree.

3 78. Ogletree's firm policy was that shareholders were not permitted to represent non-  
4 firm clients without obtaining prior authorization from Ogletree's management.

5 79. Ogletree's firm policy was that shareholders were not permitted to accept direct  
6 payments from non-firm clients without obtaining prior authorization from Ogletree's  
7 management.

8 80. Ogletree's management referred to such non-firm clients as "outside clients."

9 81. Ogletree's policy regarding outside clients was known among the lawyers at the  
10 firm.

11 82. As a lawyer who worked at Ogletree, Respondent was aware of Ogletree's policy  
12 regarding outside clients.

13 83. On or about November 29, 2012, Respondent disclosed to Ogletree personnel that  
14 Dorsey had filed a grievance against her with the Office of Disciplinary Counsel alleging that  
15 Respondent had misappropriated funds from Dorsey by accepting payments from "off the  
16 books" clients and depositing those payments in her personal accounts.

17 84. Dorsey's grievance included a copy of Respondent's separation agreement with  
18 Dorsey.

19 85. The filing of the grievance was the first time that Ogletree learned that  
20 Respondent's termination from Dorsey resulted from allegations that Respondent had  
21 misappropriated funds from Dorsey.

22 86. Ogletree personnel told Respondent to forward the grievance to the firm's general  
23 counsel, Christopher Mixon.  
24

1 87. On December 2, 2012, Mr. Mixon spoke to Respondent by phone.

2 88. In this conversation, Respondent acknowledged that she had received and kept  
3 payments from "off the books" clients while at employed by Dorsey.

4 89. Respondent told Mr. Mixon that she had signed the separation agreement with  
5 Dorsey three days before she began employment at Ogletree.

6 90. Ogletree initiated a review of Respondent's activities while at Ogletree.

7 91. During the period December 15, 2011 through January 2013, Respondent  
8 represented at least seven outside clients without obtaining authorization from Ogletree's  
9 management.

10 92. In representing one or more of the outside clients, Respondent used Ogletree's  
11 office space.

12 93. In representing one or more of the outside clients, Respondent used Ogletree's  
13 office equipment.

14 94. In representing one or more the outside clients, Respondent used Ogletree's Federal  
15 Express shipping account.

16 95. Respondent received at least \$10,000 from outside clients while employed at  
17 Ogletree.

18 96. Respondent deposited these funds into her personal bank accounts.

19 97. Respondent was not entitled to receive the \$10,000.

20 98. Respondent intentionally misappropriated the \$10,000 knowing that she was not  
21 entitled to the funds.

22 99. Respondent intended to deprive Ogletree of funds that belonged to it.

23 100. On January 9, 2013, Mr. Mixon, and a member of Ogletree's Board of Directors,  
24

1 Charles Baldwin met with Respondent to discuss the investigation.

2 101. At the beginning of the meeting, Respondent told Mr. Mixon and Mr. Baldwin that  
3 she had not represented any outside clients while at Ogletree.

4 102. In truth and in fact, Respondent had represented at least seven outside clients while  
5 at Ogletree without obtaining authorization from Ogletree's management.

6 103. At the time Respondent represented to Mr. Mixon and Mr. Baldwin that she had  
7 not represented any outside clients while at Ogletree, she knew this to be untrue.

8 104. Respondent made the misrepresentation to Mr. Mixon and Mr. Baldwin to conceal  
9 from them that she had represented outside clients while at Ogletree.

10 105. Following her initial denial of representing any outside clients, Respondent stated  
11 to Mr. Mixon and Mr. Baldwin that she had handled one outside client matter while at Ogletree.

12 106. Respondent said the work performed for this client was a continuation of work that  
13 had commenced before she was employed by Ogletree.

14 107. In truth and in fact, Respondent represented more than one outside client while  
15 employed by Ogletree.

16 108. At the time Respondent represented to Mr. Mixon and Mr. Baldwin that she had  
17 represented only one outside client while at Ogletree, she knew this to be untrue.

18 109. Respondent made the misrepresentation to Mr. Mixon and Mr. Baldwin to conceal  
19 from them the actual number of outside clients she represented while at Ogletree.

20 110. Toward the end of the meeting Mr. Mixon and Mr. Baldwin showed Respondent  
21 emails showing that she had represented at least seven outside clients while at Ogletree.

22 111. Respondent then admitted to representing all of those clients.

23 112. On or about January 13, 2013, Respondent executed a settlement/separation  
24

1 agreement with Ogletree.

2 113. In the agreement, Respondent acknowledged that she accepted engagements to  
3 provide legal services on behalf of various outside clients.

4 114. Respondent further acknowledged that she was not authorized by Ogletree to  
5 provide legal services to the outside clients.

6 115. In the agreement, Respondent promised to pay to Ogletree the larger of an amount  
7 equal to the sum of all payments she received from the outside clients during the period she was  
8 employed at Ogletree, or \$15,000.

9 116. As of the date of the this amended complaint, Respondent has not made any  
10 payments to Ogletree.

11 ***Failure to place advance fees in trust***

12 117. Respondent represented the outside clients on a flat fee basis.

13 118. Respondent did not provide the outside clients with written flat fee agreements.

14 119. Respondent did not did disclose to the outside clients that their fees would not be  
15 placed in a trust account.

16 120. Respondent did not disclose to the outside clients that the flat fee arrangement did  
17 not alter the client's right to terminate the client-lawyer relationship.

18 121. Respondent did not disclose to the outside clients that they could be entitled to a  
19 refund of a portion of the fee if the representation was not completed.

20 **COUNT 6**

21 122. By unlawfully appropriating funds belonging to Ogletree, Respondent violated  
22 RPC 8.4(b) by committing crimes of theft (RCW 9A.56.040 and/or RCW 9A.56.050 and/or  
23 9A.56.060), and/or violated RPC 8.4(c), and/or violated RPC 8.4(i).

1 **COUNT 7**

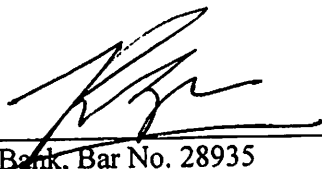
2 123. By misrepresenting to Ogletree that she did not represent outside clients while  
3 employed at Ogletree and/or the number of outside clients she represented while at Ogletree,  
4 Respondent violated RPC 8.4(c).

5 **COUNT 8**

6 124. By failing to deposit advance flat fees in trust, as is required in the absence of a flat  
7 fee agreement that conforms with RPC 1.5(f)(2), Respondent violated RPC 1.15A(c)(2).

8 THEREFORE, Disciplinary Counsel requests that a hearing be held under the Rules for  
9 Enforcement of Lawyer Conduct. Possible dispositions include disciplinary action, probation,  
10 restitution, and assessment of the costs and expenses of these proceedings.

11  
12 Dated this 21<sup>st</sup> day of May, 2014.

13  
14   
15 Kevin Bank, Bar No. 28935  
16 Senior Disciplinary Counsel  
17  
18  
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23  
24

# APPENDIX B

## **Applicable ABA Standards for Imposing Lawyer Sanctions**

### ***4.1 Failure to Preserve the Client's Property***

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
- 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

### ***5.1 Failure to Maintain Personal Integrity***

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

- 5.11 Disbarment is generally appropriate when:
  - (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
  - (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.
- 5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.
- 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.
- 5.14 Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law.

## **7.0 *Violations of Duties Owed as a Professional***

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

# WASHINGTON STATE BAR ASSOCIATION

September 29, 2017 - 11:19 AM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 201,639-1  
**Appellate Court Case Title:** In re: Carlene M Placide, Attorney at Law (WSBA #28824)

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